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T O
THE RIGHT HONOV-
RABLE, SIR HENRIE MONTAGVE;
Knight, Lord chiefe Iustice of the Pleas,
holden before the Kings
MAIESTIE.

MY Honourable good Lord,

MAfter I had spent many yeeres in the study of the Lawes of this Realme, and was called to the ministration of *Iustice* in my Countrey, I thought it not sufficient to apply my selfe onely to the precepts and directions of former times; but with-
all, to observe such new accidents, as daily happened within mine experience, thereby the better to performe the duties of my place : Whilest I thus endeavoured my selfe, I observed that *Iustices* of Peace in their places, grew in neglect, and many times were over-swayed by superiour solicitations, yea, and sometimes disgraced, in such sort, as I could have beene content rather to have sit downe in private quiet, than with care, study, and paines to incurre such hazards and discontentments. But againe, whilest I stood thus doubtfull, it pleased the Foun-
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The Epistle Dedicatorie.

taine of Iustice, (I meane his *Royall Majestie*) so to countenance and grace, yea, to shew his Majesties high esteeme of this authority of *Iustices* of Peace, not onely (in his Majesties late Speech in the *Star-Chamber*;) prizing and valuing them with the neereſt imployed about him; But (to the great honour of this Realme, and of the government thereof) ſithence alſo eſtabliſhing this countrey government by Iuſtices of Peace, in his Majesties native Countrey of Scotland: ſo as me thought, I ſaw the current of Iuſtice to runne cleare and comfortably thorow the Land, and my ſelfe to receive new vigour and encouragement; whereupon I began to recollect my confuſed Notes and Observations, willing for my private help and better readineſſe; ſo digeſt them into ſome order and method, ſuch as my understanding could beſt contrive: Thus prepared, I yet made queſtion with my ſelfe, whether it were better to adventure the publiſhing of theſe my labours, or to keep them by me only for my owne private uſe. In this unſetled conſultation, being brought unto your Lordſh. by my good friend, (who alſo diſcovered to your Lordſh. this my labour) & finding your Lordſh. favourably to reſpect me, and it, I took heart and encouragement to put the ſame in print, after that I had obtained (according to my humble ſuit) your Lordſh. favour for allowance and patronage thereof.

Now it remaineth further to crave of your Lordſhip not onely for my ſelfe, but for all that ſhall uprightly labour in this Iuſticiary courſe, that we may receive from your Lordſhip ſuch encouragement and countenance, as that we may couragiouſly and conſtantly undergoe the charge impoſed upon us, without feare of oppoſitions, or other uncomfortable diſturbances. So by your Lordſh. favour and means, ſhall juſtice bee the more duely adminiſtred, and his Majesties peace be the more firmly maintained, to the honour and ſafety of the Kings Majestie, and the good and peaceable government of all his Subjects. And ſo his Majestie will no doubt proceed (as he hath begun) yet ſtill to increaſe your Honour, for your care in honouring him, and his Royal Thron thereby; And the people, who ſhall feele the goodneſſe and benefit of your zeale of juſtice, will
heartily

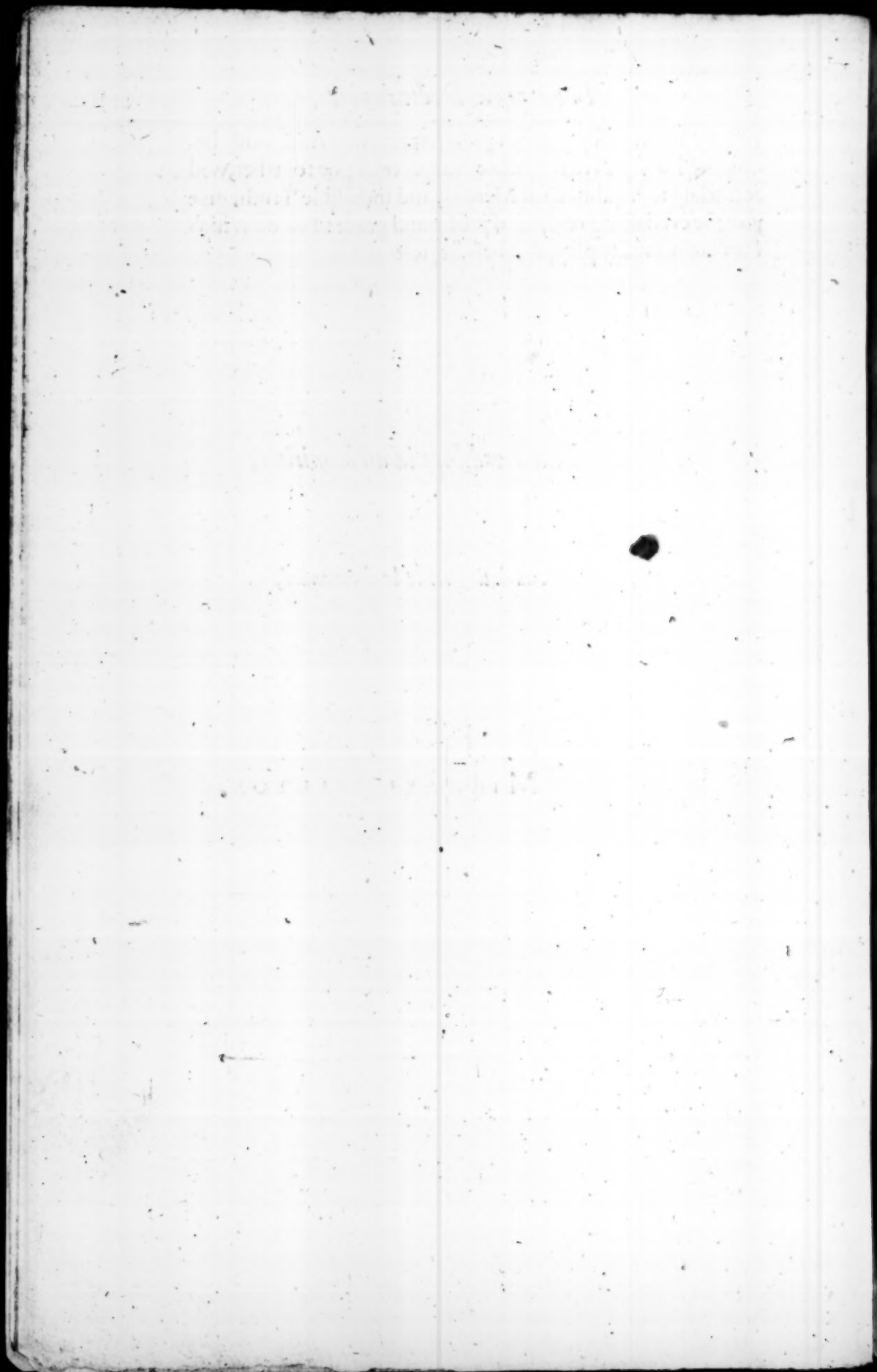
The Epistle Dedicatorie.

heartily and joyfully pray for your happinesse, And God, beholding how you make justice and peace to goe together, will according to his abundant Mercies, and unfallible Truth, give you the everlasting reward of justice and peace: For all which I will continually pray, and besides, rest

Your Lordships in all humilitie,

and dutie, ever to be commanded,

MICHAEL DALTON.





TO THE RIGHT WOR-

shipfull Sir JAMES LEE, Knight, the Kings
Maiesties Attorney of his Court of Wards and
Liveries, and to the Right worshipfull, and my very
good Uncle, THOMAS SPENCER, Esquire,
and to the residue of my Masters of
Lincolnes Inne.



I may peradventure seeme strange, that af-
ter so many learned Writers in this kinde,
I (a man of so weake parts) should presume
to offer to the view of the world, a worke of
this nature: Yet my reasons being consider-
ed with indifferent favour, I hope to be ex-
cused not onely with you, but with all others
that be lovers of their Countrey, and seeke
the peace thereof. I confesse my selfe a long, yet an unprofitable member
of your honourable Society, but seeing that my calling is to a Countrey
life, and considering that he which is of the meanest condition, and that
hath the smallest talent, may not, (without just reprehension) retire him-
selfe so to his private pleasure, or profit, as that he should neglect to shew
some fruit and token of his love to his Countrey (lest therein the Hea-
then Philosopher might justly condemn him, who said, Non solum no-
bis nati sumus, sed partim patriæ, &c.) I have been the bolder, accor-
ding to my place, small power and capacity, to offer this my small mite
into the Treasurie of my Countrey; This worke (whatsoever it be being
written first as private notes for my particular helps in this businesse,
wherewith

THE EPISTLE.

where with my selfe and many others are daily imployed, and set on work, without yeelding any pleasure or profit at all to us, otherwise then for the publike good.

The sweet of like labours, you my great Masters (which I doe most gladly behold) doe from time to time reap more fully, rising daily to great honor and wealth, through your Wisdomes, Deserts, and great paines; That which remaineth to us Country Iusticers (for the most part) is the wearying of our selves, the spending of our time, wits, and estates, Vt alii inde pace fruuntur, and requited many times not only with much evill will, from or by the meanes of such as we have in Iustice to deale withall, but oftentimes also rather disgraced then countenanced or encouraged by some in higher place.

I speake not this without acknowledging it to be both just and meet, that the actions and proceedings of the Iustices of Peace should be well and duly looked into, and themselves worthy to bee punished, when through malice, or other corruption, they shall doe unjustly: But if through unwilling ignorance they happen to erre and doe amisse, they are rather to be better informed, then ill intreated: *Nemo nascitur sapiens, & humanum est errare.*

I am bold to write unto you, my worthy Masters, and worshipfull friends, and the rest of this honourable fellowship, knowing that there be many amongst you, daily rising to great places, whose honour it will be to maintaine the life of the Law, and Iustice of the Realm, with the excellencie thereof in causing due execution thereof to bee had and done; redressing the abuses and defects thereof, and encouraging such as shall cary themselves justly, fideliter, & sincerè: Againe, that there be many among you, of great learning and judgement, by whom this my imperfect work may, yea, and I hope shall be more polished and perfected. And seeing some others amongst you, whose fortunes prove (as mine doth) to withdraw themselves into their Countries, I would gladly encourage them to imploy their better talents to the common good.

I acknowledge there be divers other books in this kinde, more learned and methodicall; but withall I observe the businesse of the Iustices of peace, to consist partly in things to be done by them out of their Sessions, (and sometimes privately, and peradventure upon the sudden, without the advice or association of any other) and partly at their Sessions of the Peace: Of things of this last kinde, I purpose not in this Treatise to meddle, for that at such publike meetings and assemblies they are far more
able

THE EPISTLE.

able to direct themselves; but for the private and sudden helpe of such Iustices of Peace, who peradventure have not read over the former Writers, and if they have, yet the multiplicity of statutes (whereupon the office and private practice of Justices of peace doth principally consist) being such, and at every Parliament so altered, by expiration, discontinuance, and otherwise, as that it is a work very hard and laborious, for Gentlemen not conversant in the study of the Lawes (although otherwise very industrious) to proceed as by the Commission they ought and are prescribed, scz. *Secundum Leges, & Statuta Regni*: upon which considerations, and for their ease principally, I have published this work; knowing that there be divers both honourable and worthy persons in the Country, of whom some for want of knowledge of the many and particular Statutes in force, and tediousnesse of the studie of them, do seek to be exempt out of the Commission of the Peace; others being in, doe forbear to meddle, or meddling, doe not that good service therein which they are desirous to doe. I have therein endeavoured to set downe things so plainly, and briefly as I could, with reference to the statutes abridged, whereby the Reader may the better resolve, and satisfie himself what he ought to doe in every particular almost, that shall come before him, or them, out of their generall Sessions of the peace. And yet for that in cases of ambiguity, *Satius est fontes petere quam sectari rivulos*, I could wish all Iustices of the peace to have ready by them the Statutes at large, as well as the Abridgements; and to use this Book, or the Abridgements of the Statutes, as Tables, and briefe Memorials, but to trust and ground themselves chiefly upon the bookes at large.

It resteth now only to intreat your favours; and although I might rest confident by the honourable Patronage I have obtained of him, whose high place, and Presidencie for matters of Iustice, and judicious understanding, drew me to covet the same, (and not a little besides induced, yea obliged thereto in regard of the neere alliance by Mariage into the Honourable house of the Spencers:) Yet withall I could not out of that duty and love which I owe to this Honourable Society, (my first breeder in the Studies of the Law) and hope of your tender respect, to uphold the credit of an affectionate member of your Society, but be bold also to crave your further countenance in these my labours; and that you would be pleased to accept this loving remembrance as a thankful gratuity to you, to whom I must ever acknowledge my selfe deeply obliged, and ever to rest at all your commands,

MICHAEL DALTON.



For the better use of this Booke, and finding out
of the Authors herein alledged, you must observe
these short directions hereunder following.

F. or Fitz. Fitzherbert. *He was sometimes one of the Iudges of the
Common Plees.*

Br. Brooke, *sometimes Lord chiefe Iustice of the Common Plees.*

Dyer, *late also Lord chiefe Iustice of the Court of Common Plees.*

Co. Sir Edw. Coke, *Knight, late Lord chiefe Iustice of the Kings
Bench, &c. his bookes of Reports.*

Co. L. i. Sir Edw. Cokes *first part of Institutes &c. upon Little-
ton.*

Fi. M. Henry Finch, *Apprentice del Ley.*

Plow. *Master Plowdens Commentaries.*

Rast. Rastals *Abridgement of the Statutes, imprinted Ann. Dom.
1583. He was sometimes one of the Iudges of the Common Plees.*

Lib. Intr. *The Booke of Entries, Impress. 1596.*

Lbt. or Lambt. *Master Lamberds Iustice of Peace, imprinted
1599.*

Crompt. *Master Cromptons Iustice of Peace, imprinted 1606.*

P. Masters Poultons *Abridgement of the Stat. imprinted 1606.*

P. R. *Master Poulton de Pace Regis.*

Ba. Sir Fr. Bacon, *The Elements of the Common Law.*

Ba. V. *His use of the Law.*

Of

Of the Common Law, and of such as had, and
still have, the conservation of the Peace,
by the Common Law. C A P. I.



a The Law
of God is the
Law of the
Land.
34. H. 6. c. 6.
Prison. Doct.
& Scilicet. 1.
cap. 6.
Co. j. 40.
Fi. 3.
b Common
Law is com-
mon Reason.
Vide Pl. 36.
2. 67. a. 107.
b. & 469. a.
Co. j. 8. & 9.
Parts. Pre-
face. For-
reſcue ca. 17.
Lit. 209.

THe Common Lawes of this Realme of England, recei-
ving principally their grounds from the Lawes of^a God
and Nature, (which Law of Nature as it pertaineth to
man, is also called the Law of^b Reason) and being for
their Antiquitie, those whereby this Realme was go-
verned many hundred yeares before the Conquest; the
equity and excellencie whereof is such, as that there is
no humane Law within the circuit of the whole world, by infinite de-
grees, so apt and profitable, for the honorable, peaceable, and prosperous
government of this Kingdome, and so necessary for all estates, and for
all causes, concerning Life, Lands, or Goods; as these Lawes be: These
Lawes (I say) even from their beginning, have continued a speciall care
for the conservation of the peace of this Land. And to that purpose, at
the Common Law (long before Justices of the Peace were made) there
were sundry persons to whose charge the maintenance of this Peace was
recommended, and who with their other offices had (and yet still have)
the conservation of the peace annexed to their charges, as a thing inci-
dent to, and unseparable from their said offices. And yet neverthelesse
they were and are called by the names of their Offices only, the conser-
vation of the peace being included therein.

20 H. 7. 7. 7.
Cost. 1. 85.

First, the Kings Majestie (by his dignity royall) is the principall con-
servator of the peace within his Dominions, (and is *Capitalis Iusticiarius*
Anglie) in whose hands alone at the beginning, the Administration of
all Justice, and all Jurisdiction in all causes first was; and afterwards by
and from him only was this authority derived and given to others.

And yet so, as that whatsoever power is by him committed over unto
other men, the same neverthelesse remaineth still in himselfe; inso much
that he may himselfe in person sit in judgement, as in ancient times other
Kings here have done, and may take knowledge of all cases and causes, un-
lesse they concerne himselfe, for in such cases wherein the King is a party,
the King cannot properly sit in judgement, but must performe that by his
Justices, Commissioners, or the like, as in cases of treason, felonies, or such
others. The King also as he is the principall conservator of the Peace him-
selfe, so he may command all others to keepe the peace, and may award
Processe against them to conserve the peace: But he cannot take a recog-
nizance for the peace, because the recognizance is made to himselfe, &c.

2 Amb. 12.

The Lord Chancellor (or Lord Keeper of the great seale) the Lord
high Steward of England, the Lord Marshall, and high Constable of
England,

England, the Lord Treasurer of England, and every Justice of the Kings Bench, as also the Master of the Rolls, have inclosed in their said offices the conservation of the peace over all the Realme, and every of these may award Precepts, and take Recognizances for the peace, by vertue of their places, and as incident to their offices: Yea every one of these upon prayer of surety of the peace made to them, or any of them against another, hath authority to award or grant their precept or warrant to the Sheriffe, Constables, or other the Kings Officers for the arresting of the party, &c. and when he is come before them may take recognizance of him for the peace. And if the party shall refuse to finde such surety, they may commit him to prison. And yet for the Master of the Rolls, it is held that he maketh Proceffe and taketh recognizance, not as incident to his Office (as all the other may) but the Master of the Rolls his authority herein is said to be onely by prescription, that he hath used to make such Proceffe, &c.

But at this day the conservators of the peace are held to be out of use; and that their authority for the keeping of the peace, is now onely by vertue of the Kings Commission of the peace, ordaining them to be Justices of Peace. Sir *Fr. Bacon* his use of the Law, pag. 12.

There be others who, by vertue of their offices have the conservation of the peace, but yet onely within the precinct of their severall Courts, as namely, the Justices of the Court of Common Plees, the Barons of the Exchequer, and the Justices of Assise. And any person may pray and crave the surety of the peace before any of these in their Courts, and if the party be present, or within the place or precinct of their Court, or within their view, they may send the Warden of the Fleet, or other officers attending their Court, to bring the party before them, and they may take surety of him, and if he shall refuse to finde such surety, they may commit him to prison.

Lamb. 1. 3.
2. 14. 7. 1.
Br. Peace. 14.

Also the Justices of Assise, if the peace happen to be broken in their presence, they may command the offender to the Gaole or prison. And if complaint be made to them that A. is minded to breake the peace, or else if they doe perceive the same in their presence, they may command the parties upon a certaine paine to keepe the peace, and that weapons be taken from the Jurors, or witnesses, that appeare before him. But as they be meerey Justices of Assise they may not award any proceffe or warrant for the peace, neither may they take sureties of the peace, *Lamb. 1. 3.*

Also the Steward of the Sheriffs Turne, the Steward of a Leet, and the Steward of a Court of Pypowders: every of these are conservators of the peace within their severall Courts; For every of them may commit him to ward that shall make an Affray in their presence, whilest they be in execution of their offices; for that these be Courts of Record: and so in all other Courts of Record. But none of these may grant any warrant for the peace.

Lamb. 14.
Br. Lect 36.

And the Steward of the Sheriffs Turne, as also the Steward of a Leet (during their Courts) may by Recognizance, binde him to the peace that shall make an Affray in their presence, sitting the Court: And may commit him to ward untill he hath found surety for the peace: And may

Crompt. 7.
Br. Lect 39.
F. N. B. 13.

also

11. H. 4. 120

also take the examination of felons, and commit them to the Gaole, and
91. Ed. 4. 22. may also take the presentment of any felony at the Common Law, committed within their precinct; Or of any other offence against the peace, except the death of a man. See *Br. Leet* 1. 2. 14. 18. 22. 26.

Co. 2. 38. And so, if any other contempt or disturbance to the Court shall be committed in any (of the said Courts, or in any other) Court of Record; the Judge (or Steward) there, may impose upon such offenders a reasonable fine. See *Br. Leet* 14. 36.

FN. B. 81. d. & 82. Br. Peace 13 The Sheriffe by the Common Law, is a principall conservator of the peace in every place within his County. And (upon request to him made) he may command another to finde surety of the peace, and may take the same surety by Recognizance, and that *ex officio*, and without any writ of *Supplicavit* to him directed: and this seemes to be by vertue of his Commission, which saith, *Commisimus vobis custodiam Comitatus, &c. vide Br. Judges* 11. & *Recogn.* 5. 14. 16. & 18.

Stamf. 48. Coroners also (by the Common Law) are conservators of the peace; within the County where they be Coroners: but they (as also all other the conservators of the peace by the Common Law) have power for the keeping of the peace; onely as the Constables have at this day: *vide hic infra, & tit. Forcible Entry. & Cromp.* 6.

The high Constables of hundreds, are conservators of the peace within their severall hundreds and limits by the Common Law. *Cromp.* 6. & 222. 12. H. 7. fol. 18.

And therefore these high Constables; at their pety Sessions, for any affray made in disturbance of their Court, may imprison the offenders. *Co.* 11. 43. 44.

Br. Peace 13 Fi. 127. Every pety Constable within the limits of their severall Townes, be conservators of the peace (at the Common Law) by vertue of their office: *Vide tit. Affray and Forcible Entry.*

And these pety Constables may do what they can to keepe the peace; But they cannot take surety of the peace, at the request of any man. *Vide Cromp.* 6. & 222. & 12. H. 7. fol. 18. a. & *hic postea.*

1 b. 51. 52. 53. 54. & 55. There be other Officers of much like authority to our Constables: As the Borholders in Kent, the Thirdborow in Warwickshire, and the Tythingman and Burrowhead or Headborow, or Chiefe pledge in other places. But yet the office of a Constable is distinct, and (as it seemeth) is of more and greater authority and respect than these other, as you may see by master *Lambert* of the duty of Constables. *pag.* 51. & c. where hee seemeth to hold that these Borholders, Thirdboroughs, Tythingmen, Headboroughs, and other such, being in any Towne or Parish whereas a Constable is, those other cannot meddle, because Constables be (in comparison of them) head Officers. And that the Tythingmen, &c. are but as assistants to the Constable in all services of his office when the Constable is present; and in his absence, then these other to attend the service: And that there are many other things which the Constables may doe; and wherewith the Borholders and the rest cannot meddle at all: And yet in Townes where there be no Constables, and that the Borholders, Thirdboroughs, Tythingmen, Headboroughs, or such other, be there the onely

Officers for the peace; as also in such cases where the power or authority of the Borsholder, &c. is declared to be equall with the power of the Constable: in all such cases and things, their office and authority be in a manner all one. See the Statute 1. Jac. cap. 7. & Lambi. office d'l Const. 4. 6. 9.

There be also divers Statutes which doe appoint offenders to be punished by the Constable, or other inferiour Officer. See *hic* cap. 57. Now who be these inferiour Officers if not the Tythingmen, &c.

And now for that these petty Constables be much absent from their houses or homes, partly by reason of their employments in their office, and partly by reason of their owne private occasions, (especially in our, and other like parts of the Land; where these Officers are for the most part husbandmen, and so most part of the day in the fields) it would prove very serviceable, if by a Law to be made in Parliament, every Towne and Village were to have a Tythingman, or such other Officer, (or the like) to attend this service of the Constable in his absence at the least, for that for want of such assistance, Rogues, Vagabonds, and the like, knowing their times, now travell up and downe farre more boldly.

And yet Master *Crompton* fol. 222. saith, that a Constable may make a Deputy to execute his Office in his absence, for that he may be sick, &c. *q. re* in what manner.

If any man shall make an affray or assault upon another in the presence of the Constable or Borsholder, or if any man in the presence of the Constable shall threaten to kill, beat, or hurt another, or shall be in a fury ready to breake the peace, in every of these cases, the Constable or Borsholder may commit the offenders (to the Stocks, or to some other safe custody for the present, (as his or their quality requireth,) and after may carry them before some Justice of Peace, or to the Gaole) untill they shall finde surety for the peace; which surety the Constable himselfe may also take by obligation, to be sealed and delivered to the Kings use; and if the party will not finde such surety to the Constable, hee may imprison the party untill he shall doe it. 3. H. 4. 9. 10.

I have seene the report of *Skarrets* case, *termino Trin. Anno 35. Eliza. Rotul. 1458.* where *Skarret* brought his action of false imprisonment against one *Hammer*, for arresting the plaintiffe, and imprisoning him, &c. The defendant to the imprisonment pleaded that he was high Constable of the hundred of E. in the County of S. and that the plaintiffe made an Affray within the said hundred upon one H. W. who presently came to him, and told him thereof, and swore upon a booke that he was in feare of his life by the other: Whereupon the defendant came to the plaintiffe and arrested and imprisoned him, untill he had found sufficient sureties for the peace: upon which the plaintiffe demurred. And it was adjudged that the plea of the defendant was insufficient, first, for that hee was not present at the assault and Affray; secondly, for that hee was the high Constable of the hundred, and not Constable of the Towne. In the argument of which case, *Anderson* held Constables to be conservators of the peace at the Common Law, and still so to be, and that they ought to preserve the peace as much as in them lyeth, but that (said hee) was by parting of men which he should see breaking of the peace, and to carry them

1. H. 4. 9. 10.
Fitz. 29.
Hic cap. 57.

them before a Justice of peace, to finde sureties for the keeping thereof: but to take sureties himselfe, the Constable cannot. And those which hold that he may take surety, cannot tell what surety that should be, for he cannot take a recognizance, nor bayle, for he is no Officer of Record; and if he shall take an obligation, how the same shall be certified, and into what Court, he said he knew not, and that it should be very inconvenient to give such authority to every Constable. But by *Walmeslye, Owen, and Beamond*, although a Constable cannot take surety for the peace by recognizance nor bayle, yet he may take an obligation according to the booke 10.E.4. And if the Affray be in their presence, they are conservators of the peace, and therefore may use such meanes for the keeping of the peace by taking surety by obligation. And that before Justices of Peace were, the peace was preserved, and that by the Constables. And that the Statute which ordained Justices of Peace did not take away the authority of the Constable; But the Constable hath no authority to take an oath of the party that hee is in feare, &c. Whereunto *Ander-son* chiefe Justice replied, saying, I doubt not but that at the Common Law the peace was kept, but that was to be done in such manner as the Law appointed, and that is by writ out of the Chancery or Kings Bench.

Bacon-v.5.

Sir *Fr. Bacon* Lord *Verulam* in his booke intituled the Use of the Law, writeth to this effect, By the Common Law, the Constables office was to arrest the parties that had broken the peace; or were (in a fury) ready to breake the peace: *sc.* if either hee had seene it himselfe; or were truly informed thereof by others; or upon the confession of the party, who had freshly broken the peace; And that all such offenders the Constable might imprison in the Stocks, or in his owne house, as the quality required, untill they had beene bound by obligation, with sureties to the King to keepe the peace from henceforth: which obligation was to be sealed and delivered to the Constable to the use of the King; And the Constable was to send it into the Exchequer, or Chancery, from whence Proesse should be awarded to levie the debt, if the peace bee broken. *quod Nota. Vide etiam Finch. fol. 127.* agreeing herewith, for such as the Constable findeth breaking the peace.

Every of these Conservators of the Peace are (by the ancient Common Law) to imploy their owne valour, and may also command the meet help, ayd, and force of others, to arrest and pacifie all such who in their presence, and within their jurisdiction and limits, by word or deed, shall goe about to breake the Peace.

Also every of these Conservators of the Peace, if they have committed, or bound over any such offenders, it seemeth they are then to send to, or to be present at, and attend the next Sessions of the Peace, or Gaole delivery, there to object against such offenders.

But for the high Constables, and pety Constables, although they have (by the Common Law) the charge of the Peace as incident to their office, yet it seemeth to some, that their offices and authority began not long before the time that Justices of Peace were ordained. (See here *titulo* Constable.) Whereas the Sheriffs, Coroners, Stewards of the Sheriffs Turne, of the Leet, and of the Court of Pypowders, and the Justices of

all higher Courts, were long time before the conquest. See *Co. 9. Part*, the Preface.

There were sundry other persons, who (by the ancient Common Law) had the ordinary keeping of the peace, and were named *Custodes pacis*, whereof some were by election (in full county,) and some by Tenure, as you may see in *M. Lambert* 16, 17. There were others which were called to this office by the Kings Writ, to continue for the terme of their lives, or at the Kings pleasure, but these are now all ceased.

The first ordaining of Iustices of the Peace. Cap. 2.

KING Edward the first (according to the first Article of the sacred Oath received by him, and since by other Kings and Queenes of this Realme at their severall Coronations, the which is in these words, *Servabis Ecclesie Dei, Clero, & Populo, pacem ex integro, & concordiam in Deo secundum vires tuas; Quibus Rex respondit, Servabo*) in his first Parliament holden *An. 3.* of his reigne *Cap. 1.* hath established and commanded, that the peace of holy Church, and of the Land, shall be well kept and maintained in all points: The which peace of the Church is (and alwayes hath beene by the antient Lawes of this land) protected and conserved by the King, the Archbishops, and Bishops of this Realme: And the Peace of the land is and alwayes hath beene defended and maintained by the same King, and their temporall Iustices or Officers lawfully appointed for the same, &c. Which temporall Iustices, at the first were the conservators of the Peace, as aforesaid. But more especially in those times there also were in every County continually Iustices of Oyer and Determiner, and also there were Iustices Itinerants, the which had power not onely to determine all manner of quarrels (as well reall, as personall) but also all offences against the Peace, &c. as may appeare in our Law-bookes, and especially in *M. Fitzh. sit. Corone* amongst the *Iter' North' & Cant'*.

Their beginning.

For although by Chronicle Law in our Annals, it is reported, that *William* the Conqueror ordained Iustices of the Peace, about *An. Do. 1070. An. quarto* of his reigne; yet Iustices of Peace had not their being almost three hundred yeares after, *viz.* untill *Anno Do. 1327.* At which time Iustices or Commissioners of the Peace were first created and ordained by the *Stat. 1. Ed. 3. cap. 16.* By which Statute it was ordained, that in every Shire of the Realme certaine persons should be assigned (*sc.* by the Kings Commission) to keepe the Peace: And their authority was after enlarged by the statutes *4. E. 3. ca. 2. 18. Edw. 3. cap. 2. and 34. Ed. 3. cap. 1.* And by the said statute of *34. Ed. 3. 1.* were they first (generally) inabled to heare and determine (at the Kings suit) all manner of felonies and trespasses; And each County had now it proper Commissioners for the Peace, whereas before (it seemeth) the Commissions to the Iustices of Peace were not alwayes made severally into each Shire, but sometime joyntly to sundry persons over sundry Shires.

Hollinsh. 8.

Their name.

But the statute of *36. Ed. 3. cap. 12.* is the first statute that nameth them Iustices of the Peace: For the statutes of *2. Ed. 3. cap. 6. and 25. Ed. 3. cap.*

cap.6,7,8. speaking of Justices, seeme not to be of our Justices of Peace; but that of 2. Ed. 3. as also the statute of Winchester cap. 6. therein mentioned, to be meant of Justices Itinerants, or Justices in Eyre: and the other of 25. E. 3. to be meant of Justices or Commissioners specially assigned for Servants and Laborers. See for this last Lamb. 24. & 577, 578. and the statutes of Laborers made 25. E. 3. cap. 6, 7, 8. and of 42. Ed. 3. cap. 6. *Rastal. fol. 233. a. b. d.*

They be called Justices (of the peace) because they be Judges of Record; and withall to put them in minde (by their name) that they are to doe justice (which is, to yeeld to every man his owne by even portions, and according to the Lawes, Customes, and Statutes of this Realme,) without respect of person.

They are named also Commissioners (of the peace) because they have their authority by the Kings Commission.

And here it shall not be amisse, shortly to put our Justices of peace in minde, how that Justice may be perverted many wayes, (if they shall not arme themselves with the feare of God, the love of Truth and Justice, and with the authority and knowledge of the Lawes and Statutes of this Realme.) As namely,

1 First by Feare; when fearing the power or countenance of another, they doe not justice, *Deut. 1. 17.* Ye shall not feare the face of man, for the judgement is Gods, who is, *Capitalis Iusticiarius totius Mundi*; Chiefe Justice of Heaven and Earth.

2 Favour; when they seek to please their friend, neighbour, or others. *Deuter. ibid.* Ye shall have no respect of person in judgement.

3 Hatred or malice, against the partie or some of his. See *Levit. 19. 18.*

Eccle. 10. 3. 4 Covetousnesse; when they receive or expect fee, gift, or reward: for as the wise man saith, *Rewards and gifts doe blinde the eyes of the wise, and make them dumb that they cannot reprove faults.*

5 Perturbation of minde; as anger, or such like passion: *James 1. 20.* The wrath of man doth not accomplish the Righteousnesse of God.

6 Ignorance, or want of true understanding, what is to be done: *Ignorantia mater Erroris.*

7 Presumption; when without Law (or other sufficient rule or warrant) they (presuming of their owne wits) proceed according to their owne wills and affections: There is more hope of a foole, than of him that is wise in his owne conceit, *Pro. 26. 12.*

8 Delay; which in effect is a denying of justice, *Negligentia semper habet comitem infortunium, & mora trahit periculum.*

9 Precipitation, or too much rashnesse; when they proceed hastily without due examination and consideration of the fact, and of all materiall circumstances, or without hearing both parties; for as another saith (*Qui aliquid statuerit parte inaudita altera, equum licet statuerit, haud equus est;*) Hee that shall judge or determine of a matter, the one party being unheard, although he shall give just judgement, yet is he not a just Judge. And againe, *Omnia non properanti clara certaque sunt, festinatio autem semper improvida ac ceca est;* All things are plaine and certaine to him that is

not

not rash nor headie; but haste is alwayes improvident and blinde. See *Deutr.* 17.4. & *Ecclesiasticus* 11.7,8.

His Majesty
speaketh
in the Star-
chamber,
An. 1616.

All these King James his Majestie, of happy memory, hath shortly, yet fully observed in his charge lately given to the Judges, *sc.* charging them, *That they doe justice uprightly and indifferently, without delay, partiality, feare, or bribery, with stout and upright hearts, with cleane and uncorrupt hands, and yet not to utter their owne conceits, but the true meaning of the Law, not making Lawes, but interpreting the Law, (and that according to the true sense thereof, and after deliberate consultation,) remembering that their office is, Jus dicere, and not Jus dare.*

According to this last also is the rule given in the booke of Judges, *sc.* In all causes doubtfull, first to consider of the matter, to consult, and then to give sentence. Iudg. 19.39.

Yea, God himselfe hath given us presidents of such deliberate proceedings, as you may see in *Genesis* cap. 3. *vers.* 8. & *cap.* 18. *vers.* 21. Gen. 1.29, 11

These are worthy directions for all Justices of Peace, that they carrie themselves in their places uprightly and indifferently, not uttering their owne conceits, nor upon the sudden to over-rule things, but after deliberate consideration and consultation, then to proceed to execute the authority committed to them.

Their de-
scription or
definition.

Justices of Peace are Judges of Record, appointed by the King to bee Justices within certaine limits, for the conservation of the peace, and for the execution of divers things comprehended within their commission, and within divers statutes committed to their charge.

Now first that the Justices of Peace are Judges of Record (yea, that every Justice of Peace by himselfe is a Judge of Record, and one upon whose sole report and testimonie the Law reposeth it selfe very much) appeareth more plainly, if you observe these things following: 9 F. 3.
14 H. 8. 16.

1 He is made under the great seale of England, which is a matter of Record.

2 Euery Justice of Peace hath judiciall power given unto him by the commission, *sc.* in the first *Assignavimus*.

3 Also by some statutes they have judiciall power given them; for they may make a Record of a force by them viewed, and may thereupon fine and imprison the offenders: yea, one Justice of Peace in some cases, may also heare and determine offences, and punish an offender as convict upon his owne view, or upon the confession of the offender, or upon examination and prooffe of witnesses: *videtis. Forcible Entry, and Heare and Determine. Vide hic* cap. 22, & 66.

4 His Warrant (though it be beyond his authority) is not disputable by the Constable, or other inferiour Minister, but must be obeyed and executed by them: But this must be understood, when the Justice of Peace hath jurisdiction of the cause, for, or concerning which hee hath granted his Warrant; for otherwise the Constable or other Officer executing their Warrant, seemeth to be punishable, notwithstanding the Justices Warrant: *videtis. Warrants. cap.* 117. Lamb. 67. 94
14. H. 8. 18.
Co. 10. 76.

5 He may take a Recognizance (for the peace, &c.) which is a matter of Record, and which none can do but a Judge of Record. See *Br. Recog.* 8. & 14. Lamb. 67.
6 His

6 His Record (or testimony) in some cases, is of as great force as an indictment upon the oath of twelve men, and in some other cases of greater force than an indictment. See hereof, *tit. Force, Highways, Peace, and Ryot.*

7 He also may make out proceffe upon Enditements, or Information against offenders, &c. yea, and that out of their Sessions, (in some cases) as they may see hereafter. *tit. Proceff. cap. 132.*

Great cause therefore have the Justices of Peace to take heed that they abuse not this their credit and authority, either to the oppressing of the subject by making untrue Records, or defrauding of the King by suppressing the true Record.

By the Statute of 12. R. 2. cap. 10. there should bee but six Justices of Peace (in every Commission of the Peace) with the Justices of Assise. *The number.*

After, by the statute 14. R. 2. cap. 11. it was ordained that there should be eight Justices of Peace assigned, besides the Lords.

And two Lawyers (at least) shall be assigned in every County, to heare and determine felonies and trespasses done against the Peace: 18. E. 3. cap. 2. 24. E. 3. cap. 1. & 17. R. 2. cap. 10.

Also Justices of Peace ought to be Resident and dwelling within the same County, (except Lords, and Judges, &c.) 2. H. 5. cap. 4. & 2. H. 5. Stat. 2. cap. 1.

Peace. CAP. 3.

First Just. of
P. 12.

PEACE in effect (saith M. Fitzb.) is the amity, confidence, and quiet that is betweene men: And hee that breaketh this amity or quiet, breaketh the Peace.

Yet Peace (in our Law) most commonly is taken for an abstinence from a ctuall and injurious force, and offer of violence; and so is rather a restraining of hands, then an uniting of mindes. And for the maintenance of this Peace chiefly, were the Iustices of Peace first made.

The breach of this Peace seemeth to be any injurious force or violence moved against the person of another, his goods, lands, or other possessions, whether it be by threatening words, or by furious gesture, or force of the body, or any other force used *in terrorem*.

The office of the Justice of Peace is principally to be exercised to the suppressing of such injurious and unlawfull force or violence; and yet (the commission of the peace being *pro bono pacis*, *ac pro conservatione ejusdem*, & *pro quieto regimine & gubernatione populi*) I see not why the Justices of Peace should be restrained from preventing and repressing such other offences, misbehaviours, and deceits, as may breake the amity, quiet, and good government of the people, and whereof discords, and so breaches of the peace doe often arise (though there appeare neither force nor violence in the offence it selfe:) as libellings, coozenages, and such other offences, *vide tit. Good Behaviour.*

But it is no part of the office of the Justice of Peace, to forbid lawfull suits; albeit they shall doe well to be mediators of Peace in such suits and

and controversies as shall arise amongst their neighbours. Neither shall any man be punished for suing any writ in the Kings Courts; *soit ceo de Droit, ou de tort. Co. L. 1. 61.*

The conservation of this peace (and therein the care of the Justice of Peace) consisteth in three things, *viz.*

1 In preventing the breach of the Peace, (wisely foreseeing and repressing the beginnings thereof) by taking surety for the keeping of it, or for the good behaviour of the offenders, as the case shall require.

2 In pacifying such as are in breaking of the peace. See *postea* *tit. Affray.*

3 In punishing (according to Law) such as have broken the peace.

But of the three, the first, the preventing Justice, is most worthy to be commended to the care of the Justices of Peace.

Three sorts. Justices of Peace (at this day) are of three sorts, and are appointed or created by three means:

1 First, by act of Parliament; as the Bishop of Ely and his successors, and their temporall Stewards of the Isle of Ely (for the time being) shall be Justices of Peace within the said Isle, and shall use and have within the said Isle, all such power as doth belong to any Justice of Peace within any County.

*27. H. 8. 24.
P. Just.*

And so of the Archbishop of Yorke, and the Bishop of Durham, and their successors, and their temporall Chancellors, &c. *ibidem.*

By grant.

2 Secondly, by Grant made by the King by his Letters Patents, under the great Seale, (and by his Bill assigned) as Mayors, and chiefe Officers in divers corporate Townes: And such the King cannot discharge againe at his pleasure, but they shal continue and enjoy their jurisdiction, according as their Letters Patents doth enable them; and therefore if the King granteth to a Mayor, or other head Officer of a Citie, or Corporate Towne, and to their successors, to be Justices of Peace in their Citie or Towne, and after maketh out a Commission of the Peace to others there, yet the authority and jurisdiction of the Mayor, &c. remaineth good, for that it was granted to them and their successors, and is not revocable at the Kings pleasure, as a Commission of the Peace is.

Lamb. 16.

*Br. Com.
miss. 5.*

And such Justices of Peace by Grant or Patent, have thereby the same power that the conservators of the Peace had by the common Law; and it seemeth, such power also as is given to the Justices of Peace, (or to any one Justice of Peace) by expresse words in any statute: But none of them have thereby the whole power which is ordinarily given to the commissioners of the Peace by their commission: And so it seemeth of the first sort of Justices of Peace by act of Parliament, *sc.* of the Archbishop of Yorke, and the Bishops of Durham, and Ely, and their temporall Chancellors, and Stewards.

Also concerning such Justices of Peace by Grant or Patent, if the Grant be made to such as be not learned in the Law, yet if the Grant be *ad pacem conservandum, &c.* or *ad inquirendum tantum*, this is a good Grant; But if their Grant be made *ad audiendum & terminandum* this is a void Grant (*ut dicitur*) unless some one man learned in the Lawes of this Realme be also joyned with the other in the Commission, and then such

a Com-

a Commission made *ad audiendum & terminandum* is good in Law. For in all cases where the Commission or Grant is *ad audiendum & terminandum*, it is meet that some, or one at the least, should be learned in the Lawes of this Realme. See the Statutes 18.E.3. cap.2. & 13.R.2. cap.7. & 17.R.2. cap.10.

11.H.6.c.11 3 The third sort of Justices of Peace are by Commission (made of By Com-
common course,) under the great Seale of England: and these are ap-
pointed by the discretion of the L.Chancellor. And yet the Justices of
Ratcl. 124.d Peace within the County Palatine of Lancaster, are to bee made by
Commission under the Seale of the same Duchie, by the Statute 27.H.8.
cap.24.

But these Commissioners of the Peace, their authority doth deter-
mine by divers meanes; yet more usually by three meanes:

First, by the death of the King, or by his Resignation of his Crowne:
For by the Commission he maketh them *Iusticiarios nostros*, so that he be-
ing once dead, or having given over his Crowne, they are no more his
Justices; And the Justices of the next Prince they cannot be, unlesse it
shall please him afterwards so to make them; *Lamb. 71. Dyer, 165.*

Secondly, at the Kings pleasure; and that in two sorts.

5.E.4.33.
Br. Commiff.
18.
12. Aff. 1.
Br. Commiff.
13.

1 Either by the Kings pleasure expressed, (as the King in expresse
words may discharge them by his Writ under the great Seale) or by *su-
persedeas*: but the *Supersedeas* doth but suspend their authority, which
may be revived by a *Procedendo*.

Br. Commiff.
20. 24.

2 Or by implication; (as by making other Commissioners of the
same kinde, and within the same limits, leaving out the ancient Com-
missioners names) 10.E.4.7. & 3.Mar.1.

Br. Commiff.
26. 18.

But here the ancient Commissioners must have knowledge of such
new Commission; for this determination of the old Commission groweth
not immediately by the making of the new Commission; but either by
giving speciall notice of the new Commission unto the old Commis-
sioners; Or else by and after the reading (or proclaiming) of the new Com-
mission, at the Assises, Sessions of the Peace, or at the full County; Or
else by holding of some open Sessions, by vertue of the new Commis-
sion; (in which two last cases, the old Commissioners must take notice of
the new Commission.) And in all these cases, if the ancient Commis-
sioners doe sit by vertue of their ancient Commission, and after such no-
tice or publishing of the new Commission, all whatsoever such ancient
Commissioners shall so doe, is void: And contrariwise, untill such notice
or publishing of the new Commission, whatsoever meane acts such an-
cient Commissioners shall doe, by vertue of their ancient Commission, is
good in Law. See 34. Aff. 8. Br. Commiff. 14.

11.H.6.ca.6.
18. 6 ca.6.
P. Discont. 6.

Also in all cases where an ancient Commission of the Peace is deter-
mined by a new, yet, no proceffe or suit depending before the old Com-
missioners shall be discontinued thereby, neither shall any other thing
done by the Justices of the Peace by force of their ancient Commission,
be made or become void thereby.

Thirdly, by the Accession of another office, as when a Justice of
Peace is chosen to be Sheriffe of the same County, his authority of a Ju-
stice

Iustice of Peace there is suspended during his Sherifiewike; But after that another is chosen, and sworne Sheriffe of the same County, then his authority as a Iustice of Peace remaineth as it was before, without any renewing of the Commission, and without any of the oathes newly to be taken by him; except his name be then put out, or left out of the Commission, as sometimes hath beene used to be done, and perhaps onely to get new fees. 1. Ed. 6. 7.
1. M. 2.
1. Discout.

The reason why his authority of a Iustice of Peace is suspended during his Sherifiewike, seemeth to be, for that the Sheriffe is a Minister, and a Iustice of Peace is a Iudge, and the one is as necessary as the other. And besides, the Office of a Iudge being to command, and of a Minister to execute the commandement; if one man shall be both Iudge and Minister, thereof it would follow that the Sheriffe ought to command himselfe, or that he shou'd as an Officer serve his owne precept, made as a Iustice or Iudge, the which cannot be.

Also if a Iustice of Peace be made a Coroner of the County, this by some opinions is a discharge of his authority of Iusticeship of Peace: otherwise, say they, where he shall be made an Escheator, Vndersheriffe, Bayliffe, or the like. *Lamb. 72. quare.*

But if a Iustice of Peace be made a Knight, or Serjeant at Law, or hath any greater name or Office of honour or dignity given him, this taketh not away his authority of a Iustice of Peace. *Br. Commiss. 4. & 22.* See also the Statute of 1. E. 6. cap. 7. 1. 7. 6. ca. 7.
1. Discout. 4.

Note also, that although by the death of the King, or by his resignation, the authority of all Iustices of Peace (yea and of all Iudges, Commissioners of Oyer and Terminer, Commissioners of Gaole delivery, Sheriffs, Escheators, and other Officers that are by commission) doth cease; yet Mayors, and chiefe Officers in Cities and corporate Townes, (which have the authority of Iustices of Peace, or of the conservation of the Peace by Grant under the Kings Letters Patents to them and their successors) their authority still remaineth, notwithstanding the Kings death, or resignation. Br. Commiss. 19. 21.
off. 15
Dyer 165.
Co. 7. 30.
Br. Comm. 5.

So also the Office and authority of the high Constables and petty Constables, seemeth to remaine, notwithstanding the death of the King, &c. for that their authority is by the Common Law, and to their said Office the conservation of the Peace remaineth as a thing incident, and unseparable from the same.

Coroners also doe remaine conservators of the Peace (within the County where they are Coroners) notwithstanding the Kings death, &c. for they are made by the Kings Writ, and not by Commission; and their Office and authority doth remaine untill they be removed by the Kings Writ; and their Office remaining, the conservation of the Peace remaineth as incident thereto. 1. E. 4. 44.
Br. Off. 15.
Dyer. 165.

CAP. 4.

P. Iust. 4.
1. h. 12. 1.

EVery Justice of Peace (before he shall take upon him to exercise the ^{Their oaths} Office of a Justice of Peace) shall take two corporall oaths; the one concerning the Office of a Justice of Peace; the other concerning the Kings Supremacie.

The Oath concerning this Office, seemeth to be by force of the statute made 13.R.2.c.7. And yet see the oath of the Justices, made *Anno* 18.E.3. much to the like effect that now it is: in which yeare also M. *Marrow* taketh it, that Justices of Peace were first made, they having then first power given them to heare and determine felonies and trespasses against the Peace, as appeareth by the statute of 18.E.3.c.2.

The forme of the Oath is, at this day, as followeth:

Yee shall sweare, that as Justice of the Peace in the County of Cambridge, in all Articles in the Kings Commission to you directed, you shall doe egall right to the poore, and to the rich, after your cunning, wit, and power, and after the Lawes and Customes of the Realme, and Statutes thereof made: And yee shall not bee of counsell of any quarrell hanging before you: And that yee hold your Sessions after the forme of Statutes thereof made: And the issues, fines, and amerciaments that shall happen to be made, and all forfeitures which shall fall before you, yee shall cause to bee entred without any concealment, (or imbezeling) and truely send them to the Kings Exchequer; yee shall not let for gift, or other cause, but well and truly you shall doe your Office of Justice of the Peace in that behalfe: And that you take nothing for your Office of Justice of the Peace to be done, but of the King, and fees accustomed, and costs limited by the statute: And yee shall not direct, nor cause to be directed, any warrant (by you to be made) to the parties, but ye shall direct them to the bayliffes of the said County, or other the Kings Officers (or Ministers) or other indifferent persons, to doe execution thereof. So helpe you God, &c.

The parts of this oath are shortly fix:

1 That they shall doe equall right to rich and poore, and according to the lawes and statutes of the Realme.

2 That they shall not be of counsell with any person, in any matter depending before them.

3. That they shall keep their Sessions according to the statutes, which (as it seemeth by the prescript of the statute 2.H.5. cap.4.) ought to bee in the first weeke, after the feast of S. Michael, after the Epiphany, after the clause of Easter, and after the translation of Saint *Thomas*, (being the third day of July.) And accordingly the quarter Sessions of the Peace ought so still to be holden throughout the Realme. See *Lambi.* 579, 580. And yet by the statute of 14.H.6. cap.4. The Justices of Peace of Middlesex are to keepe their Sessions but twice in the yeare.

4. That all issues, fines, amerciaments, and forfeitures which happen before them, be by them truly entred, and sent into the Exchequer.

C

5 That

2 H. 5. 4.
P. Iust. 5.

5. That they take nothing for doing their Office but of the King, and the accustomed fees appointed by the statutes.

6. That they shall not direct any their Warrants to the parties, but to the Bayliffes of the Countie, or to other the Kings Officers, or other indifferent persons.

Now further concerning the times of the quarter Sessions, it seemeth to be the intent or meaning of the afore recited Stat. 2.H.5.c.4. that the weekes wherein the afore said feasts of Saint Michael, the Epiphany, and Saint Thomas falleth, must be first ended before the Sessions can begin. So that if any of these three feast-dayes shall fall upon the Sunday, Monday, Tuesday, or Wednesday, then shall the Sessions (in our County of Cambridge) bee upon Thursday seven night after; but if any of those feasts shall fall upon Thursday, Friday, or Saturday, then shall our Sessions be upon the next Thursday after; and for our Easter Sessions upon the Thursday seven night after Easter day.

The other Oath concerning the Kings Supremacie, is by force of the statute made *primº Eliz. cap. 1.* The forme of which Oath also followeth.

I Michael Dalton, doe utterly testifie and declare in my conscience, that the Kings Highnesse is the onely Supreme Governour of this Realme, and of all other his Highnesse Dominions and Countries, as well in all Spirituall and Ecclesiasticall things (or causes) as Temporall: And that no forrein Prince, Person, Prelate, State, or Potentate, hath, or ought to have any jurisdiction, power, superiority, preheminence, or authority, Ecclesiasticall or Spirituall, within this Realme: And therefore I doe utterly renounce and forsake all forrein jurisdiction, powers, superiorities, and authorities, and doe promise, that from henceforth I shall beare faith and true allegiance to the Kings Highnesse, his heires, and lawfull successors, and (to my power) shall assist and defend all jurisdiction, privilege, preheminence and authority granted or belonging to the Kings Highnesse, his heires and successors, and united and annexed to the Imperiall Crowne of the Realme. So helpe me God, &c.

The Justices of Peace ought to take this Oath for the Supremacie, in the open Court of Sessions where they shall serve, by the statute 5. *Eliz.* 1. (as M. Crompton holdeth;) and it were very fitting so to be; or else to be taken at the Assises by the Judges, lest (by indirect practice) it be neglected.

Yet it is most usuall that both these Oaths are taken by a special commission, (*viz.* by a Writ of *Dedimus potestatem*, directed out of the Chancery to some ancient Justice of Peace, to take the same Oaths) which by them is to be certified into the same Court, at such day as the Writ commandeth. The forme of which certificate, see *hic postea*, cap. 130.

The Justice of peace (or other person) to whom a *Dedimus potestatem* shall be directed, to take the Oaths of a new Justice of peace, if hee shall returne the Commission, and the oaths to be taken, when they were not taken, this is fineable in the Star-chamber.

So if the new Justice of Peace shall exercise this Office before he hath taken both these oaths, he is likewise fineable in the Star-chamber.

Also

Comp. 11.

Also if a Iustice of Peace shall not performe his Oath (concerning his Office) it seemeth he is fineable in the Starre-chamber, &c. Yet see *Co.*

Co. 1198.

11.98.a. That a man shall not be charged in any Court judicall for the breach of a generall Oath, which he taketh when he is made an Officer, or Minister, &c.

There is a third Oath, tending to the declaration of such duty as every well affected subject by bond of Allegiance, and by the Law of God ought to beare to his Sovereigne; which Oath is by force of the statute 3. *Jac. cap. 4.* And is to bee taken also by all Iustices of Peace (among others) by the statute 7. *Jac. cap. 6.* which Oath is usually taken before the Iudges of the Assise of the same County, where the parties (to be sworn) reside. *The oath of Allegiance.*

The forme of this Oath is thus.

I *Michael Dalton*, doe truly and sincerely acknowledge, professe, testifie and declare in my conscience before God, and the world, That our Sovereigne Lord King CHARLES, is lawfull and rightfull King of this Realme, and of all other his Majesties Dominions and Countreys: And that the Pope, neither of himselfe, nor by any authority of the Church, or Sea of Rome, or by any other meanes with any other hath any power or authority to depose the King, or to dispose any of his Majesties Kingdomes or Dominions, or to authorize any forrein Prince to invade or annoy him, or his Countreys, or to discharge any of his subjects of their Allegiance and Obedience to his Majestie, or to give licence or leave to any of them to beare armes, raise tumult, or to offer any violence or hurt to his Majesties royall Person, State, Government, or to any of his Majesties subjects, within his Majesties Dominions. Also I doe sweare from my heart, that notwithstanding any declaration or sentence of excommunication or deprivation made or granted, or to be made or granted by the Pope or his successors, or by any authority derived, or pretended to be derived from him, or his See, against the said King, his heires or successors, or any absolution of the said subjects from their obedience, I will beare faith and true Allegiance to his Majestie, his heires and successors, and him and them will defend to the uttermost of my power, against all conspiracies and attempts whatsoever, which shall bee made against his or their Persons, their Crowne and Dignity, by reason or colour of any such sentence or declaration, or otherwise; and will doe my best endeavour to disclose and make knowne unto his Majestie, his heires and successors, all treasons and trayterous conspiracies, which I shall know or heare of to bee made against him or any of them. And I doe further sweare, That I doe from my heart abhorre, detest, and abjure, as impious and hereticall, this damnable doctrine and position, That Princes which be excommunicated or deprived by the Pope, may bee deposed or murdered of their subjects, or any other whatsoever. And I doe beleieve, and in conscience am resolved; That neither the Pope, nor any other person whatsoever, hath power to absolve me of this Oath, or any part thereof, which I acknowledge by good and full authority to be lawfully administred unto me, and doe renounce all Pardons

dons and Dispensations to the contrary. And these things I doe plainly and sincerely acknowledge and sweare, according to these expresse words by me spoken, And according to the plaine and common sense and understanding of the same words, without any equivocation, or mentall evasion, or secret reservation whatsoever. And I doe make this recognition and acknowledgement, heartily, willingly, and truly, upon the true faith of a Christian. So helpe me God.

Nota quod Iuramentum debet habere Comites, Veritatem, Iudicium, & Iustitiam. Jer. 4. 2. Et si ista defuerint, non Iuramentum, sed Perjurium erit: Nemo se seducat, qui enim per lapidem false jurat, perjurus est; Quacunque arte verborum, vel mentis reservatione juret aliquis; Deus ita accipit sicut ille cui juratur intelligit; Et minus malum est per Deum falsum jurare veraciter, quam per Deum verum jurare fallaciter.

Now for that all the authority and power of the Commissioners or Justices of the Peace, ariseth partly out of their Commission, and partly out of the Statutes, I will first set downe the forme of the Commission it selfe, shortly considering the parts thereof.

The forme of the Commission of the Peace.

CAP. 5.

CAROLVS, &c. *Predecessor & fidei. Thome Domino Coventry de Allesbrough Domino Custod. mag. sigilli Anglia, Richard. Weston Comiti Portland Thesaurario Anglia, &c. Salutem.*

I
Ad pacem
conser-
vandam.

Sciat, quod Assignavimus vos, conjunctim & divisim & quemlibet vestrum, Iusticiarios nostros, ad pacem nostram in Comitatu nostro Cantabrigie conservandum, Ac ad omnia Ordinationes & Statuta pro bono pacis nostra ac pro conservatione ejusdem, & pro quieto regimine & gubernatione populi nostri edita, in omnibus & singulis suis Articulis in dicto Comitatu nostro (tam infra libertates, quam extra) juxta vim, formam, & effectum eorundem custodiendum, & custodiri faciendum. Et ad omnes, contra formam Ordinationum vel Statutorum illorum aut eorum alicujus, in Comitatu praedicto delinquentes, castigandum & puniendum, prout secundum formam ordinationum & statutorum illorum fuerit faciendum, Et ad omnes illos, qui alicui, vel aliquibus de populo nostro de corporibus suis, vel de incendio domorum suarum, minas fecerint, ad sufficientem securitatem de pace vel bono gestu suo, erga nos & populum nostrum inveniendam coram vobis, seu aliquo vestrum venire faciendum. Et si hujusmodi securitatem invenire recusaverint, tunc eos in prisonis nostris (quousque hujusmodi securitatem invenerint) salvo custodiendi faciendum.

2
Ad Inqui-
rendum.

Assignavimus etiam vos, & quoslibet duo, vel plures vestrum (quorum aliquem vestrum, A. B. C. D. E. F. &c. unum esse volumus) Iusticiarios nostros, ad inquirendum per Sacramentum proborum & legalium hominum de Comitatu praedicto (per quos rei veritas melius sciri poterit) de omnibus & omnimodis felonis, veneficiis, incantationibus, sortilegiis, arte magica, transgressionibus, forstallariis, regratariis, ingrossariis, & extortionibus quibuscunque: Ac de omnibus & singulis aliis malefactis & offensis (de quibus Iusticiarii pacis nostrae legitime inquirere possunt, aut debent) per quoscunque

& qualitercunque in Comitatu predicto factis sive perpetratis, vel imposterum ibidem fieri, vel attemptari contigeris: Ac etiam de omnibus illis qui in Comitatu predicto in conventiculis contra pacem nostram, in perturbationem populi nostri, seu vi armata ierunt, vel equitaverunt, seu imposterum ire vel equitare presumpserint: Ac etiam de omnibus hiis qui ibidem ad gentem nostram machinandum, vel interficiendum in insidiis jacuerunt vel imposterum jacere presumpserint: Ac etiam de hostelariis, & aliis omnibus & singulis personis, qui in abusu ponderum vel mensurarum, sive in venditione victualium, contra formam Ordinationum & Statutorum vel eorum alicujus, inde pro communi utilitate regni nostri Anglia & populi nostri ejusdem, editorum deliquerunt, vel attemptaverunt, seu imposterum delinquere, vel attemptare presumpserint in Comitatu predicto: Ac etiam de quibuscunque Vicecomitibus, Ballivis, Seneschallis, Constabulariis, Custodibus Gaolarum, & aliis officiariis, qui in executione officiorum suorum (circa premissa seu eorum aliqua) indebitè se habuerunt, aut imposterum indebitè se habere praesumpserint, tepidi, remissi vel negligentes fuerunt, aut imposterum fore contigerit in Comitatu predicto: Et de omnibus & singulis articulis & circumstantiis, & aliis rebus quibuscunque per quoscunque & qualitercunque in Comitatu predicto factis, sive perpetratis, vel qua imposterum ibidem fieri, vel attemptari contigeris, qualitercunque promissorum, vel eorum alicujus, concernentibus plenius veritatem. Et ad indictamenta quaecunque sic coram vobis seu aliquibus vestrum, capta, sive capiende, aut coram aliis nuper Iusticiariis pacis in Comitatu predicto facta, sive capta (& nondum terminata) inspiciendum: Ac ad processus inde versus omnes & singulos, sic indictatos, vel quos coram vobis imposterum indictari contigeris (quosque capiantur, reddant se, vel utlagentur) faciendum & continuandum. Et ad omnia & singula felonias, veneficia, incantationes, sortilegia, artes magicas, transgressiones, forstallarias, regratarias, ingrossarias, extortiones, conventicula, indictamenta predicta, ceteraque omnia & singula promissa, secundum leges, & statuta regni nostri Anglia (prout in hujusmodi casu fieri consuevit aut debuit) Audiendum & Terminandum, & ad eosdem delinquentes, & quemlibet eorum, pro delictis suis, per fines, redemptiones, amerciamenta, forisfacturas, ac alio modo (prout secundum legem & consuetudinem Regni nostri Anglia, aut formam Ordinationum vel Statutorum predictorum, fieri consuevit aut debuit) castigandum & puniendum.

Provisio semper quod si Casus difficultatis super determinatione aliquorum promissorum coram vobis vel aliquibus duobus vel pluribus vestrum evenire contigeris: tunc ad iudicium inde reddendum, nisi praesentia unius Iusticiarii nostrorum, de uno vel de altero Banco, aut Iusticiariorum nostrorum ad assisas in Comitatu predicto capiendas assignatorum coram vobis vel aliquibus duobus, vel pluribus vestrum minime procedatur. Exceptio.

Et ideo vobis, & cuilibet vestrum mandamus quod circa custodiam pacis, Ordinationum, Statutorum & omnium & singulorum ceterorum promissorum, diligenter intendatis. Et ad certos dies, & loca, quae vos vel aliqui hujusmodi, duo vel plures vestrum (ut praedictum est) ad hoc provideritis, super praemissis faciatis Inquisitiones, & praemissa omnia & singula audiat & terminetis, ac ea faciatis & expleatis in forma praedicta, facturi inde quod ad Iusticiam pertinet, secundum legem & consuetudinem regni nostri Anglia: Charge to the Justices.

Salva nobis amerciamentiis, & aliis ad nos inde spectantibus.

To the
Sheriffe.

Mandamus etiam tenore presentium vicecomiti nostro Cantabrigie, quod ad certos dies & loca (qua vos vel aliqui huiusmodi duo vel plures vestrum ut predictum est, ei ut predictum est, scire faceritis) venire facias coram vobis vel huiusmodi duobus vel pluribus vestrum (ut dictum est) tot & tales probos & legales homines de balliva sua (tam infra libertates quam extra) per quos rei veritas in premissis melius sciri poterit & inquiri.

To the
Custos
Rotulor.

Assignavimus denique te prefatum Johannem Cuts Militem, Custod. Rotulorum pacis nostre in dicto Comitatu nostro. Ac propterea tu, ad dies & loca predicta, Brevia, Precepta, Processus, & indictamenta predicta, Coram te & dictis sociis tuis, venire facias, ut ea inspiciantur & debito fine terminentur, sicut predictum est. In cuius rei testimonium, &c. Datum, &c.

This Commission hath two parts, containing the power of the Justices of Peace.

The first *Assignavimus* (or first part) of the Commission doth give power to any one Justice of Peace (more or all) to keepe, and cause to be kept the peace, and all Ordinances and Statutes made for the conservation of the peace, and for the quiet government of the people: As namely, the Statutes made for Huy and Cry after Felons; And the Statutes made against Murtherers, Robbers, Felons, Night-walkers, Affrayers, Armor worne in *terrorem*, Riots, Forcible Entries, and all other force and violence; all which be directly against the Peace. The particulars whereof you shall finde more fully hereafter, and most of them under their proper titles.

Stat. Winc.
13. E. 3. c. 2.
6. 2. 2. 1. 4.

By this first clause in the Commission, the Justices of Peace have, as well all the ancient power touching the peace, which the Conservators of the Peace had by the Common Law, as also that whole authority which the Statutes have since added thereto.

Lumb. 46.

The meanes which the Justices of Peace must use for the keeping of the Peace, and for the execution of these Statutes, is as followeth:

For to prevent the breach of the Peace, the Justice of Peace may send his Warrant for the party, and may take sufficient sureties of him (by Recognizance) for keeping the Peace, or for the good behaviour, (as the case shall require:) And may send the party to the Gaole for not finding such sureties.

But for these Statutes made for the Peace, they are to be executed according to such prescript and order, as themselves doe deliver; wherein, if no power at all bee expressly given to any one Justice of Peace alone, then can hee not otherwise compell the observation thereof (as it seemeth) than by admonition onely: In which behalfe if he shall not bee obeyed, he may preferre the cause at the Sessions, and to worke it to a presentment upon the Star, And so (by the helpe of his fellow Justices) to heare and determine thereof, as Law requireth.

Lambert 47.

And here note, that whereas before the making of the Statute. 1. E. 3. cap. 16. there were no Justices of Peace within this Realme (but onely conservators of the peace, as is before shewed:) And whereas, by the Commission of the Peace presently after, and to this day, the Justices of Peace

Peace had, and still have the *Statute of Winchester* given them in charge, to execute the same; which *Statute of Winchester* (being made 13.E.1.) was long before there were any Iustices of Peace: by this it may appear, that the King by his Commission may commit the execution of the Statutes and Lawes to whom hee shall please. And so also a Justice of Peace, by vertue of the Commission may execute any Statute, whereunto he shall be enabled by the said Commission, although there shall be no such expresse power given to him so to doe, by the words or letter of the same Statute.

The second *Assignavimus* in the Commission, doth give authority to any two Justices of the Peace (or more, the one being of the *Quorum*) in these five things following.

1 To inquire (by a Jury) of all offences mentioned within the Commission.

2 To take, and view all Indictments or Presentments of the Jury.

3 To grant out processe against the offenders, thereby to cause them to come and answer.

4 To heare and trie all such offences (upon any former or future indictments taken before themselves, or before any other Justices of the Peace) after the offenders be come in.

5 To determine thereof, by giving judgement, and inflicting punishment upon the offenders, according to the Lawes and Statutes.

But all the businesse included within the second *Assignavimus*, belongeth to the Sessions of the peace; And therefore I leave (here) to write any further thereof.

Note also, that there be divers Statutes which be not specified within the Commission, and yet are committed to the charge and care of the Justices of Peace; But all such Statutes which doe give expresse any power or authority to the Justices of Peace, are to them a sufficient warrant and commission of themselves, although they be not recited in the Commission: And all such statutes are also to be executed by them according as the same Statutes themselves doe severally prescribe and set downe.

And for that most of the businesse and practice of the Justices of Peace doth consist & lie in the execution of such statutes as are committed to their charge (whether they be specified in the commission, or not specified there) the numbers of which statutes are exceedingly increased of late yeares, to the over-burthening of all the Iustices of Peace: And (the rather) to give some little helpe to such Iustices of Peace, who (being destitute of the assistance of such as are learned in the Lawes) are dayly to administer Iustice, and to execute their Office at home, and out of their Sessions; I have for their better ease herein, endeavoured (in this Treatise) to set downe more orderly and particularly the severall parts and branches of every such statute by it selfe, under their proper titles, with further referments to the Statutes themselves at large, or to the abridgements.

Their power

THE Power and Authority of the Justices of Peace (as well given them by the said Commission, as by the Statutes) is in some cases Ministeriall or Regular, and limited as a Minister onely; and in some other cases Judiciall or Absolute, and as a Judge.

Ministeriall, when hee is thereto commanded by an higher Authority :

As upon { A *Supplicavit* (out of the Chancery, or Kings Bench) for the taking of surety for the Peace, or good behaviour :
See hereof *tit. Surety for the Peace. Cap. 73.*
A Writ upon the Statute of Northampton, upon a Forcible Entrie : See hereof *tit. Forcible Entrie. Cap. 22.*

In the execution of which two writs, the Justice of Peace may proceed no further, or otherwise, than he is authorized by such Writ; and is also to returne the Writ, and to certifie his doings therein, into the Court whence the Writ came.

But in all other cases within their authority, the power of the Justices of Peace, seemeth to be Absolute (in some manner) so as they & every of them, may of their owne power proceed *ex officio*, & as a Judge; yet this their power is also limited, for they may neither hang a man for a trespasse, nor fine him for a felony, but must proceed in all things according as they are prescribed by the Commission, and by the said severall Statutes.

Discretion.

And yet for that all considerable circumstances can neither bee comprehended in the Commission, nor foreseene at the time of the making of the Statutes, therefore oftentimes some things are referred to the consideration of the Justices of Peace, and left to be supplied by them in their discretion.

The Commission of the Peace (in it selfe) doth leave little (or nothing) to the discretion of the Justices of Peace; but doth limit them to proceed *secundum Leges, Consuetudines, Ordinationes & Statuta*: And indeed to leave too much to discretion, were to open a gap to corruption.

But by some late Statutes, some things are (therein by speciall words) referred to the discretion of the Justices of Peace; some out of Sessions, and some at their Sessions.

I will here onely set downe some particulars of such things as are referred to their discretions out of their Sessions.

Some things referred to the discretion of one Justice of Peace out of the Sessions, which you may more fully see hereafter in this Booke, in the severall Titles here under written.

Fifth degree.

Flesh killed in Lent, one Justice of Peace may give to the poore at his discretion.

One Justice may compell any person meet (in his discretion) to be bound an Apprentice.

One

One Justice of Peace may cause all such persons as be meet, to labour *Labourers* (by his discretion) to worke in Haruest and Hay time.

Malts that be deceitfull, may be sold, &c. at such reasonable prices, as *Malt* one Justice of Peace (in his discretion) shall thinke expedient.

One Justice of Peace (as it seemeth) may (by his discretion) give di- *Plague* rections to the searchers, watchmen, and keepers, &c. of persons infected with the plague. See *Crompt. 122. b.*

Treipassers in Corne, Orchards, Hedges, or Woods, which (in the *Trepass* discretion of the Justice) are not thought able to give satisfaction, shall be whipped.

It seemes that one Justice of Peace may heare & determine by exami- *Tyle* nation or otherwise, by his discretion, the offences committed in Tyle-making.

Some things referred to the discretion of two Iustices of P. out of the Sessions.

TWO Justices may allow and discharge Alehouse-keepers, as they shal *Alehouses* thinke meet.

Two Justices may take Recognisance of Alehouse-keepers for keeping good orders, &c. according to their discretions.

Two Justices may appoint overseers of woollen Cloth by the yeare, *Cloth* or for shorter time, by their discretions.

Clothiers, their workefolkes imbezeling any part, shall be punished, &c. by the discretion of two Justices.

Two Justices may grant their Warrant to call before them any person or persons, which in their discretion shall bee thought fit to discover any offence in the making of deceivable woollen Cloth, &c. *21. Ja. Cap. 18.*

Servants, &c. assaulting their master, may bee imprisoned for one *Labourers* yeare, or lesse, at the discretion of two Justices.

Two Justices may (by their discretion) compell women to serve, and for such wages, and in such sort, as they thinke meet.

Two Justices may taxe others of the County (by their discretions) *Plague* towards the releefe of places infected, &c.

Two Justices may taxe any in the Hundred (by their discretions) *Poore* towards the releefe of the poore of any Towne that is overcharged.

Two Justices may dispose of all forfeitures, to grow upon the statutes *Rogues* of Rogues at their discretions, &c.

Two Justices may asseffe (according to their discretions) proportionably, all the parishes within the Hundred, towards a contribution, for the parties charged upon a robbrie, &c. *Robberie*

Two Justices shall take order (by their discretion) to set poore Souldi- *Souldiers* ers, &c. to worke, that cannot get worke, and for want of worke may taxe the Hundred (by their discretions) for the releefe of such Souldiers, &c.

Two Justices may fine (by their discretions) the head Officers in Bo- *Weights* roughes and Market Townes, that doe not view, &c. all weights and measures; or doe not breake and burne the defective.

Two

Two Justices may fine (by their discretions) all buyers and sellers with unlawfull weights and measures.

There be some other Statutes; and some other Cases, wherein the discretion of the Justices of Peace (out of their Sessions) is tolerated: but the counsell of *Cicero* herein is to be observed; *Sapientis est Iudicis cogitare tantum sibi esse permissum, quantum sit commissum ac creditum.*

Also the sayings of the right honourable, and late reverend Judge and Sage of the Law (in his fift part in *Rookes* case, and in his tenth part in *Kighleyes* case) are worthy observation, *sc.* That discretion is a knowledge or understanding to discern betweene truth and falshood, betweene right and wrong, betweene shadowes and substance, betweene equity and colourable glosses and pretences, and not to doe according to our wills and private affections, for *talīs discretio discretionem confundit*; and therefore in both the recited Cases, it was holden, that though the words in the Commission of Sewers, doe give authority to those Commissioners to doe according to their discretions, that yet their discretion ought to bee limited and bounded with the rules of Reason, Law, and Justice; and their proceedings must bee *secundum Legem & Consuetudinem Angliæ*; and so of other like Commissioners. Againe, Discretion (saith he) is *scire vel discernere per legem quid sit iustum: viz.* to discern, by the right line of Law, and not by private opinion, *Co. L. 227.* and therefore every Judge, Justice, (or Commissioner) ought to have *duos Sales, viz. Saleū sapientiæ, ne sit insipidus; Et saleū conscientiæ, ne sit diabolus.*

And (as Master *Lambert* well said) no way better shall the discretion of a Justice of Peace appeare, than if hee (remembring that he is *lex loquens*) shall containe himselfe within the lists of Law, and shall not use his discretion, but onely where both the Law permitteth, and the present case requireth.

In all cases therefore where the Statutes doe referre the triall of offenders, (or hearing and determining of offences) to the discretion of the Justice or Justices of Peace, out of Sessions; it is very requisite, that upon such triall or hearing, the said Justices take due examination (of the offenders themselves, and also of credible witnesses) as well concerning the fact it selfe, as the circumstances thereof, and upon confession, or other due prooffe of the offence, then to proceed according to Law and Justice.

But not to denounce or give sentence before the party be cired, and heard to answer for himselfe; For this defence is allowed by Gods Law. *Gen. 3. 9. Adam*, where art thou? and *Gen. 4. 9. Where* is thy brother *Abel*? And in the case of the five Cities, I will goe downe and see. *Gen. 18. 21.*

Note, that in all cases where the Statute referreth the triall; &c. to the discretion of the Justices, the said Statutes themselves seeme also to enable the said Justices of Peace, to take the examinations of witnesses, and that upon oath: *vide tit. Heare and Determine. cap. 66.*

Note further, that the Justices of Peace, out of their Sessions, are now armed with farre more ample authority & power, than the ancient conservators of the Peace were: for the Justices of Peace have double power given

given them, the one of Jurisdiction, to convent the offenders before them (by their warrant,) and (in divers cases out of their Sessions) to examine, heare and determine the cause; the other of Coertion (*sc.* after the cause heard) to constrain them to the obedience and observance of their order and decree (which notwithstanding must be according to the rules of Law and Justice, as is aforesaid :) whereas the ancient conservators of the Peace had no jurisdiction or authority at all, either to convent the offender before them, or to examine, heare or determine the cause; but had onely coercion, prehension (or punishment of an offender) in some few cases, as you may see before, *cap. 1.*

210. 37.

And here I must further put the Justices of Peace in minde, that their authority and power is limited to be by them exercised, onely within the Countie or Counties where they be in Commission; and yet in that of those Countie or Counties, the Justices of Peace of the County must nor intermeddle in any City there, which is a Countie of it selfe; nor in any City or corporate Towne there, (though it be no County of it selfe, but within the County) which have their proper Justices of Peace within themselves, by the Kings Charter, or Commission, (especially if in such Charter there be any speciall words of prohibition, that the Justices of the Shire: *Non se intromittant, &c.*) except such Country Justices, shall also be in Commission in such City or Towne corporate.

Lamb. 48.
69.
Cromp. 3. &
187.

20. H. 7. 6. 7.
Crom. ibid.

But in other corporate Townes which have not their proper Justices of Peace; as also in all Liberties and Franchises, (within the County) which have the returne of Writs, but have not their proper Justices; there the Justices of the Peace of the County, ought to execute their authority, and that by the words of their Commission.

Againe, if a Parish shall extend into two or more Counties; or if part thereof shall lie within the liberties of any City or Towne Corporate (which have their proper Justices) and part without, then as well the Justices of Peace of every County, as also the Justices (or Officers) of such City or Towne corporate shall intermeddle only within their owne proper and distinct limits and bounds (*sc.* within so much of the said Parish, &c. as lieth within their severall liberties and limits) and not to invade or deale in other jurisdictions; for it shall bee against Law and Reason; where offices and jurisdictions are severall, that the one should intermeddle within the jurisdictions of the other.

See hie. cit.
240.

Co 4. 46.

Vbi quis de
inquis. ibi
punietur.
See tit. Ho-
micide.

31. H. 8. c. 4.
5. H. 8. P. 12.
23. H. 8. c. 10.

Neither shall any Iustice of Peace deale in, or punish any trespassse or other like offence, committed in any other County (against any penall Statute) though such offender shall be brought before him (see the Commission the first *Affig. Et postea sit.* Gunnes, Labourers, and Partridges) except the Statute shall specially enable them thereto, as the Statutes *1. Jac. & 7. 14.* Which doe enable the Iustice of the County, where the offence shall be committed, or the offender apprehended, (*see tit. Partridges*) and the like: or that it be for matters of the Peace, or in cases of Felonie (*see tit. Affrayes and Felony.*)

Neither shall any Iustice of Peace, for the time that he shall make his abode, or be out of the County (where he is in Commission) intermeddle to take any Recognizance, or any examination, or otherwise to ex-
etcise

ercise his authority in any matter, that shall happen within the County where he is in Commission; neither can he cause one to bee brought before him out of the County where he is in Commission, into the other County; for being out of the County where he is in Commission, hee is but as a private man. See *hictit. Affray, Imprisonment, Robbery, & Warrants. & Pl. 37. & 13. E. 4. 8.*

And yet a Sheriffe being out of his County, may make a Pannell, or may make returne of any Writ. *9. H. 4. 1.*

Now my purpose is to set downe more particularly, what things the Justices of Peace out of their Sessions of the Peace, may doe in the execution of their Commission; or of the Statutes wherewith they are charged. And herein you must observe that some things are permitted to be executed by any one, two, or more Justices; and some other things are more specially appointed and appropriated (by some Statutes) to some one certaine Justice of Peace; or to two, or more Justices; either in regard that such Justice or Justices, is or are next the place, or are of the *quorum*, or the like.

And here note, that whatsoever any one Justice of Peace alone may do (either for the keeping of the Peace, or in other execution of the Commission, or Statutes) the same also may lawfully be done and performed, by any two, or more Justices.

But where the Law giveth authority to two, there one alone cannot execute this: For *Vna persona non potest supplere vicem duarum; & plus videt oculi quam oculus.* See *Co. 5. 94. & Pl. 393. a. b. Co. L. 181.* Co. 4. 46.

And yet where a Statute appointeth a thing to be done by two Justices of Peace (or more,) if the offence be any misdemeanor, or matter against the Peace, there, upon complaint made (of the offence) to any one of those Justices of Peace, it seemeth that one of those Justices may grant out his Warrant to attach the offender, & to bring him before the same Justice and the other Justice so appointed (at some convenient place) & then they to heare and determine the same: Also upon complaint thereof made to any other Justice, he may give warrant to bring the offender before himselfe or any other Justice, to finde sureties for his appearance at the next generall Sessions, there to make answer to such his offence: or else he may binde the offender to the good behaviour, and so to appeare at the next Sessions, if the said Justice shall see any just cause so to doe. But one Justice of Peace alone may not in any wise meddle to heare and determine the same.

Also when things by statute are appropriated to some one certaine Justice, or to more, there such Justice or Justices are to pursue such their authority accordingly: and yet if such Justice or Justices shall therein joyne with any other Justice of the same County, it may seeme no lesse lawfull and warrantable, *tamen quare & vide Co. 11. 92.* where an authority is given to foure, or to one of them; if two of them shall execute this, it seemeth they have not pursued their authority. So if an authority be given to three, *cōiunctim & divisim*, if two of them doe it in the absence of the third, it is void. *Dyer 62.* for that the authority is not pursued. But *Co. L. 181. b.* taketh a difference where the thing is *pro bono publico*, and where *pro*

pro privato; as if a Sheriffe upon a *Capias* maketh his Warrant to 4. or 3. jointly or severally to arrest the defendant, two of them may arrest him, for that it is for the execution of Justice, which is *pro bono publico*, and therefore shall be more favourably expounded, then when it is only for private.

But to come to the former cases of our Justices of Peace, there seemeth a generall rule to be put in *Stradlings* case (in *M. Pla.*) that when a thing is appointed by any Statute to be done by, or before one person certaine, that such thing cannot be done by or before any other; but that it ought to be done as the statute hath appointed, and by such expresse designation of one (or power given to one) certaine person, all others are excluded.

And yet whereas by the Statute of 18. *Eliz.* the order to be taken for a bastard childe, is appropriated to two Justices of Peace (one being of the *Quorum*) in or next unto the Parish where such child shall be borne; if two such Justices cannot agree upon the reputed father (or in making such order as the Statute requireth, or in other execution of that statute) *Quere* what is to be done, *et vide hic cap. 11.* But I have knowne the case lately moved to the Judges of Assise, who thought it fit that such difference betweene the two Justices of Peace, should be referred to the hearing of the whole Bench, and the matter to be re-examined by them, and what order should be therein set downe by the Bench, the same to stand good.

But in such things appropriate to some one or more Justices of Peace, if without such Justice or Justices, all (or any of) the residue of the Justices of that County shall intermeddle therein, such their doings seemeth no wayes warrantable, but such their proceedings to be *Coram non Indice*, and that there is no necessity to obey them therein, as being no lawfull Judges of the cause.

What things one Justice of Peace alone, may doe out of the Sessions: and where the aid or assistance of two Justices of Peace (or more) is required.

Alehouses, &c.

CAP. 7.

THE true & principall use of Innes, Alehouses, and Victuallling houses, is twofold, *sc.* either for the receipt, releefe, and lodging of wayfaring people travelling from place to place about their necessary businesse, or for the necessary supply of the wants of such poore persons as are not able by greater quantities to make their provision of victuals: and is not meant for entertainment or harbouring of lewd or idle people, to spend or consume their money or time there, (as appeareth by the preamble of the Statute made 1. *Jac. Reg. 1. 9.*) And therefore to prevent the mischiefs, and great disorders hapning daily by the abuses of such houses, his said Majestie of late famous memory, and our now gracious Sovereigne Lord King *Charles*, have graciously beene pleased, that divers good and profitable Lawes should be made for the redresse thereof, as followeth.

D

Every

Every keeper of Taverne, (keeping also an Inne or victualling in his house) and every Alehouse-keeper, Inne-keeper, and Victualler, which shall suffer any Townesman, or any handicraftsman, or labourer, working in the same City or Town, to remaine & continue drinking in their said house, (except such as shal be invited thither by a traveller, & during his necessary aboad there; & except handicraftsmen, labourers, and workmen, upon the working day, for one houre at dinner, or sojourning or lodging there; or except they be allowed by two Justices of Peace) the said offence being seene by any Justice of Peace within his limits, or being cōfessed by the offender, before the Justice of Peace, or being proved before any Justice of Peace, by one witnesse upon oath, every such Taverner, Alehouse-keeper, &c. shall forfeit for every such offence, x.s.

1. Ia. 9.
p. 6.
21. Ia. 7. & 21
1 Caroli 4.

And note, that the voluntarie confession (before the Justice of Peace, or other person authorized to minister the oath) of any offender against either of the Statutes of 1. Ia. cap. 9. or 4. Ia. cap. 5. shall suffice to convince the person so offending: and after such confession, the oath of the party so confessing, shall be taken, and be a sufficient prooffe against any other offending at the same time. 21. Ia. Reg. cap. 7.

If any Taverner (keeping also an Inne, or Victualling in his house) or any Inne-keeper, Alehouse-keeper or Victualler, shall at any time utter or sell within his house, or without, lesse than one full Alequart of the best Beere or Ale for j. d. and of the small two quarts for j. d. (the said offence being proved before any Justice of Peace, by one witnesse upon oath) then every such Taverner, Inne-keeper; &c. shall forfeit for every such offence twenty shillings.

And yet note, that wheresoever any conviction shall be before the Justice of Peace, by or upon the oath or testimony of any other person (than the delinquent him selfe) there the Justice of Peace must first send for, or convent the delinquent before him, to make answer, &c. and to heare and examine him of the offence, &c. for it may be that he can make sufficient defence or excuse of the fact. And this was the direction of Sir Nicholas Hyde, Lord chiefe Justice of the Kings Bench; and well agreeth with the rule here before, cap. 2. *Qui aliquid statuerit parte inaudita altera, aequum licet statuerit, haud aequum est.*

Every person that shall continue drinking in any Inne or Alehouse, &c. in the Towne where he then dwelleth (contrary to the former Statute made *primo Ia.*) the said offence being seene by any Justice of Peace, or being proved before any Justice of Peace, as aforesaid, such persons shall forfeit for every such offence, three shillings foure pence.

4. Ia. 9.
21. Ia. 7.

If any other person (wheresoever his or their habitatiō or abiding be) shalbe found (by view of any Justice of Peace or by his owne confession, or prooffe of one witnesse) to be tipling in any Inne, alehouse, or Victualling house, every such person shall be adjudged to be within the said statutes of 1. Ia. cap. 9. & 4. Ia. cap. 5. as if hee inhabited and dwelt in the City, Towne corporate, or other Towne or Village, where the said Inne, Alehouse, or Victualling house is or shall be, where he shall be so found tipling; and shall incurre the like penalty, and the same to bee in such sort levied and disposed, as in the said Act is expressed, concerning such

as there inhabite : And the voluntary confession of such an offender shall suffice to convince himselfe; and after his oath shall be a sufficient prooffe against any other offending at that time. 2 *1 Jac. cap. 7.*

1 Caroli 4. Every Taverner (keeping also an Inne, or Victualling in his house) and every Inne-keeper, Alehouse-keeper, and other Victuallers, which shall suffer any person (wheresoever his dwelling bee) to tippie in the said house contrary to the true intent of any of the said former statutes shall be adjudged within the Stat. *1 Jac. cap. 9.*

So that now by these Statutes, no person may come to tippie in any such Taverne, or in any Inne, Alehouse, or Victualling house, in the same Towne where he dwelleth, nor within two miles thereof, except he be a traveller; And so Sir *Francis Harvy*, knight, delivered it in his charge, at *Cambridge Summer Assises. An. 1629.* But the Statute. 2 *1 Jac. & 1 Caroli.* seeme to forbid all tipping in such house, wheresoever they be, and by whomsoever it be.

Any Justice of Peace in any County (and any Justice of Peace, or other head Officer, in any City or Towne corporate, within their limits) shall have power (upon his owne view, confession of the party, or prooffe of one witnesse upon oath) to convince any person of drunkennesse, whereby such persōs so convict shall incur the forfeiture of five shillings for every such offence, to be paid within one week next after such conviction, into the hands of the Church-wardens of the Parish where the offence shall be committed, &c. And if the offender be not able to pay the said summe of 5.s. then hee shall be committed to the Stocks for every such offence, there to remaine by the space of fixe houres. 4 *1 Jac. 5. 2 1 Jac. 7.*

4 Jac. 5. And for the second offence of drunkennesse, every person convict thereof as aforesaid, shall bee bound with two sureties in the summe of ten pounds with condition for the good behaviour, by any one Justice of Peace, or other head officer aforesaid (as it seemeth) 2 *1 Jac. cap. 7.* And for want of such sureties to be sent to the Gaole.

Now for to know a drunken man the better, the Scripture describeth them to stagger and reele to and fro, *Iob 12. 25. Esa. 24. 20.* And so where the same legges which carry a man into the house, cannot bring him out againe, it is a sufficient signe of drunkennesse.

1 Jac. 9. P. 6. Every Justice of Peace (within his limits) hath authority to minister the said oath to such witnesses. 2 *1 Jac. cap. 7.*

1 & 4 Jac. P. 7. 3. All and every the forfeitures aforesaid, shall be to the use of the poore of the Parish, where such offence shall be committed : and the said forfeitures are to be levied by distresse and detainer of the offenders goods, (and after six dayes by sale thereof, &c.) by the Constables or Church-wardens of the same Parish, upon a warrant from any one (or moe) Iustices of Peace, under his or their hand and seale. *1 Jac. cap. 9. 2 1 Jac. cap. 7.*

The said forfeitures of the Taverner, Alehouse-keeper, Inne-keepers, and Victuallers, being distrained for as aforesaid, if within six dayes, next ensuing they shall not pay the said forfeiture, then may the Constables or Church-wardens, by vertue of the said Warrant, presently apprise and sell the said distresse; but they must deliver the surplusage to the party of whom the distresse was taken. *1 Jac. 9. P. 7.*

For every offence aforesaid, the Alehouse-keeper, Inne-keeper, and other Victualler, for want of sufficient distresse to bee taken for such forfeitures, shall (by any one Iustice of Peace) bee committed to the common Gaole, there to remaine untill the said penalty be payed. ^{1.129. p.7.}

Every Townesman, or other person whatsoever &c. that shall continue drinking, or be found tripling in any Inne, Alehouse, or other Victualling house, contrary to the Statute, (for want of sufficient distresse, and not being able to pay the said forfeiture of three shillings foure pence) shall be set in the Stockes for every such offence, foure houres (upon warrant or commandement, from any one such Justice of Peace.) ^{4.12c.5.} 21.1a.7.

If the Constables and Church-wardens, shall neglect to levie, or shall not levie the said severall forfeitures of Alehouse-keepers, &c. suffering tripling in their houses; or for their measure of Ale, or Beere; or in default of distresse shall neglect by twenty dayes, to certifie the same defaults of distresse to the Iustice of Peace; then every such Constable and Church-warden shall forfeit for every such default 40.s. to the use of the poore, to be levied by distresse (of the offenders goods) by warrant made to any other indifferent person, from any one (or moe) Justices of Peace under their hand and seale: The said distresse to be taken and detained for the said forfeiture, for the space of six dayes, within w^{ch} time if paymēt be not made, then the same goods to be presently preised and sold; and the surplusage to be delivered to the party, &c. And for want of sufficient distresse, such Constables and Church-wardens to bee (by any such Justice of Peace) committed to the common Gaole, there to remaine untill they have payed the same forfeiture. ^{1.129. p.8.}

Also if any Constable, or other inferiour Officer of the parish, shall neglect to execute the Justices warrant, for the due correction of, or for the levying of the penalties of offenders in drunkenness, such Constable, &c. shall forfeit, x. s. to the use of the poore, &c. and to be levied as aforesaid. ^{4.12c.5.}

*Refuge to
Lege-keepers*

If a common Inne-holder, or Alehouse-keeper will not lodge a traveller, any Constable (or Justice of Peace) may compell him thereto; but how the Officer shall compell him, *quare*: it seemeth that all the Officer can doe, is either to cause such Alehouse-keeper to be suppressed; or else to present or preferre such offence of an Inne-keeper, or Alehouse-keeper, at the Assises, or Sessions of the Peace, that so such offender may be thereupon indicted. See the Commission. ^{Re. Acc. su. 92.80-6. 5.E.4.3.}

And at Lent Assises, *Anno Domini* 1622. Sir James Ley (Knight and Baronet, Lord chiefe Justice of the Kings Bench) delivered it in his charge, That an Inne-keeper or Alehouse-keeper offending herein, might be indicted, fined, and imprisoned for the same, or else, that the party grieved might have his action, *sur le Case*, against the Inne-keeper, or Alehouse-keeper refusing to lodge him. *Vide Cro. 50. & 4.H.7.22.*

But no Inne-holder, Alehouse-keeper, or other Victualler, shall bee compelled to sell, or let any traveller or other, to have any victuals or lodging, except the party shall first tender and pay ready money for the same, if it be required. ^{10.H.7.8.5.E.4.3.Co.9.87.b.}

Two Justices

Any two Justices of Peace (the one being of the *Quorum*) may allow the ^{5.E.4.25. p.11.}

the

the keeping of any common Alehouse, or Tipling house; and shall (from time to time) take Bond with suretie by Recognisance of such Alehouse-keepers, as well against the using of unlawfull games, as also for the keeping of good rule and order in their houses, according to the discretions of the same Justices.

There shall be paid for such Recognisance but xii.d. And the said Justices shall certifie the same Recognisance at their next quarter Sessions (upon paine of five markes.) *ibidem*.

Any two Justices of Peace (the one being of the *Quorum*) may remove, discharge, and put downe any Alehouse where they shall thinke meet.

The Alehouse-keeper put downe and discharged, by any two such Justices of Peace, cannot be allowed againe by any other two, or moe Justices of Peace, except it be in open Sessions, (as Sir Peter Warberton delivered in his charge at Cambridge Assises, *Anno Domini*. 1613.)

Any two Justices of Peace (the one being of the *Quorum*) may commit to prison in the comon Gaole, (for three dayes without baile) those that keepe common Alehouses, or that use common selling of Ale or Beere, obstinately of their owne authority, without allowance by two such Justices; or contrary to the commandement of two such Justices. And the said two such Justices (before the delivery of such offenders) shall take Recognisance of them, with two sureties, that he or they shall keepe no more a common Alehouse, or use commonly selling of Ale or Beere, according to the discretion of the same Justices; and shall certifie such Recognisance, discharge, and offence, at their next quarter Sessions: which certificate shall bee a sufficient conviction in Law of the same offence, without any further triall thereof to be had: And for such offence the fine of xx.s. shall be assessed in open Sessions.

But for that this former law made, 5. *Ed. 6.* hath not wrought such reformation as was intended, it is further enacted by another statute made 3. *Caroli Regis. cap. 3.* That if any person shall upon his owne authority (not being thereunto lawfully licenced) take upon him, or her, to keepe a common Alehouse, or tipling house, or shall commonly use selling of Ale, Beere, Cyder, or Perry, that every such person for every such offence, shall forfeit twenty shillings to the use of the poore of the parish where such offence shall be committed: The same offence being viewed by any Justice of Peace (Maior, or other head Officer of any Citie or Towne corporate) within their limits, or confessed by the offender or proved by the oath of two witnesses.

Every such Justice of Peace (or other head Officer aforesaid) have power to minister an oath to such witnesses. 3. *Car. 3.*

Also every such Justice (and other head Officer aforesaid) within their severall limits may make their warrant to the Constables or Churchwardens of the parish where the said offence shall be committed, to levis the same twenty shillings, by distresse, of the offenders goods; And for default of satisfaction, within three dayes next ensuing the said distresse, to be appreised & sold, and the overplus to be delivered to the offenders: And this to be onely for the first offence. *ibidem*.

*Two Justices
with one out
house*

If such offender shall not have sufficient goods whereby to levie the said twenty shillings by distresse, or shall not pay the said twenty shillings within six dayes after such conviction, then the said Justice (and other head Officer aforesaid) shall commit the said offender to the Constable where the offence shall be committed, or the partie apprehended, to be openly whipped. *ibidem*.

If the Constable, &c. shall neglect to execute the said warrant, or doe refuse, or doe not execute upon the offender the said punishment of whipping, the said Justice (or Officer) may commit the Constable, &c. to the common Gaole without baile, untill the said offender shall bee by him punished as aforesaid, or untill the said Constable, &c. shall pay forty shillings to the use of the poore of the Parish. *ibidem*.

The unlicenced Alehouse-keeper, for such his second offence, shall be committed to the house of correction for one moneth. *ibidem*. ^{1. Offence}

And for every such offence after, he shall be committed to the house of correction, there to remaine untill he be delivered by order from the generall Sessions. *ibidem*. ^{3. Offence}

Provided, that such offenders shall not be punished twice for the same offence, *sc.* shall not be punished both by the statute made *An. 5. Ed. 6.* and by this statute of *3. Caroli Regis*.

If a feme Covert, against the will of her husband, shall keepe an Alehouse, or shall use common selling of Ale or Beere, without licence, &c. the husband is punishable therfore: And the wife also (by the discretion of the Justices of Peace) may bee imprisoned for such her personall and wilfull offence, untill she shall finde sureties for her good behaviour, and that she shall no more use the same.

*2 Justices may
put downe
and commit
to gaole*

Also it seemeth (by the letter of the Statute) that the Alehouse-keeper put downe or discharged by two such Justices, if (contrary to their commandement) hee shall use common selling of Beere or Ale againe, though allowed by two other Justices of Peace, out of the generall Sessions, yet the two Justices that first discharged him, may put him downe againe, and may commit him to the Gaole for selling contrary to their commandement. ^{5. E. 6. p. 1. 44}

And yet the Statute alloweth common victualing, and selling of Ale or Beere in Faïres, though unlicenced, &c. *3. Caroli 3.* ^{5. E. 6. p. 1. 44}

If an Alehouse-keeper which is not licenced, shall suffer Townes-men, or any other person, to tipple in his house, or shall breake the Assise, &c. he is punishable for the same, by the statute made, *primo 1a. Reg. 6. 9.* and besides he may also be punished by force of the said Statute, made *5. Ed. 6 cap. 25.* or *3. Caroli 3.* for selling Beere, &c. without licence. Also if any Townes-man, or other person, shall be found to be tipling in any unlicenced Alehouse, such persons (as it seemeth) are also punishable by the same Statute, made *primo Jacobi Regis cap. 9.*

Any two Justices of Peace may give allowance to Labourers, &c. for urgent and necessary occasions, to remaine in an Inne, Alehouse, or Victualing house. ^{p. 6. 1. 14}

Common Innes are appointed for travellers and wayfaring men. *Co. 8. Co. 8. 12*
32. and therefore if any Inne-keeper, shall suffer persons inhabiting in the

the same Towne, or any other persons (contrary to the Statutes) to be (usually) tipling in his house, such an Inne-keeper may bee accounted as well an Alehouse-keeper, as an Inne-keeper; And such Inne-keepers may be bound by Recognizance with sureties for the keeping of good order, as Alehouse-keepers are; and so Judge Warberton delivered it in his charge at Cambridge Assises, *An. Dom. 1613.* And therewith also agreed Sir James Ley, and Sir John Dodderidge, in their severall charges at Cambridge Assises, *Anno Dom. 1621.* for that such Inne-keepers (said they) doe pervert the end for which they were first appointed. Or else it seemeth they may be dealt withall, *sc.* punished, or committed as Alehouse-keepers without licence, (by two Justices of Peace, as aforesaid :) Or they may be indited therefore at the Assises, or Sessions of Peace, by the Commission of the Peace.

Cromp. 7.

Also it hath beene agreed for Law, That such Innes as have beene erected since the Statute of 5. *Ed. 6. cap. 25.* and were not Innes before, ought to have licence; and that such Inne-keepers are to bee bound by Recognizance, with sureties, for keeping of good orders, as Alehouse-keepers are.

And yet at Lent Assises *Anno Dom. 1621.* Sir James Ley delivered in his charge, that Innes were Hosteries, by the common Law, and that every man might erect & keepe an Inne or an Hosterie, so as they were *probi homines*, men of good conversation, fame, and report, and dwelling in meet places: but yet that they were not worthy of any allowance or licence under the Kings great Seale, &c.

And he delivered further in his said charge, That if such Innes or Hosteries be used, *ad nocumentum populi domini Regis, &c. sc.* doe keepe any disorderly house contrary to the Law, or bee more in number than are needfull, and to the hinderance of other ancient & well governed Innes; that then they may be thereof indicted at the Assises, or Sessions of the Peace, and there may be either fined, or suppressed. And Sir James Ley told me after (at his lodging in Trinitie Colledge) that this was the opinion of all the other Judges, upon late conference had among themselves.

But such Innes or Hosteries, if they shall be inconvenient or disorderd, in respect either of the Inne-keeper, or of the resort thither, or that the place be unmeet, they are to be suppressed upon an Indictment found at the Assises, or Sessions.

And if they shall suffer Townesmen, or other persons (usually) to tipple there, they are to be punished as Alehouse-keepers without licence: for these Innes or Hosteries are to be allowed onely for travellers.

Anno 1616.

His Majestie, in his late Speech in the Starre-chamber, hath justly excepted against the abundance of Alehouses, and more specially against the infamous and blinde Alehouses, as being haunts and receits for robbers, theeves, rogues, vagabonds, and other idle, loose, and sturdie fellows; and therefore here I thought good to put the Justices of Peace in minde, that in allowing of Alehouses, they have regard, as well to the person, as the place: for all persons are not fit to bee allowed for Alehouse-keepers; neither are all places meet for an Alehouse.

As

The person. As if the party be in Liverie, or a Retainer to any man, Bayliffe of a Hundred or libertie, Constable, &c. or be one that is not of good fame, conversation, or government; such persons are not fit to be allowed to be Alehouse-keepers. See *Fitz. N.B.* 172. that no Victualer ought to sell victuall, so long as he is in office, &c. *Stat. 12. Ed. 2. cap. 6.*

Againe, *Dicitur*, that no person using any trade, ought to be allowed to keepe an Alehouse, for that were to take away the meanes, and so the life of another; *Tamen quare inde*, for that by the common law no man is prohibited to use divers trades, *Vide hic tit. Labourers.*

Also there are some persons, that by law are disabled to keepe an Alehouse, (at least for a certaine time :) as,

1 The Alehouse-keeper convicted (according to the Statute *vicefimo* 7. *Ja. 10.* *primo Jac.* 7.) for suffering Townes-men, &c. (or any other person as it seemeth) to continue drinking in his house, contrary to the said statute, (which see here before) such Alehouse-keeper is disabled to keepe any Alehouse for three yeares after such conviction. 21. *Jac. cap. 7.*

2 So the Alehouse-keeper convicted (as aforesaid) for not selling one full quart of their best Beere or Ale for one penny, and of the small, two quarts for one penny, (which see in this title a little before) such Alehouse-keeper also is disabled (for three yeares after) to keepe an Alehouse. 7. *Ja. 10.* 21. *Jac. cap. 7.*

3 The Alehouse-keeper that shall continue drinking in another Alehouse or Inne, in the same Towne where he dwelleth, (the said offence being scene by any Justice of Peace within his limits, or being proved before any Justice of Peace by two witnesses upon oath) every such Alehouse-keeper also is disabled for three yeares after such conviction, to keepe any Alehouse. 4. *Ja. 5.* 7. *Ja. 10.* 21. *Jac. 7.*

4 So the Alehouse-keeper that shall be drunken, and thereof lawfully convicted (by indictment at the Assises, Sessions of Peace, or in a Leet, or otherwise before the Justice of Peace) is disabled for three yeares to keepe an Alehouse. 4. *Ja. 5.* 7. *Ja. 10.* 21. *Jac. 7.*

An Alehouse-keeper convicted and suppressed for any of the former offences, if he shall be licenced or allowed againe by two or moe Justices of Peace within three yeares, such licence is void, and he is to be punished as one victualing without licence. And so it was delivered by Sir *Nicholas Hyde*, at Cambridge Assises, *Ann. 3. Caroli Regis.* And so it seemeth if he were convicted, though hee were not suppressed, if he be after licenced againe within three yeares after such conviction, such licence is void, &c.

5 The Alehouse-keeper that is discharged or put downe by any two Justices of Peace, the one being of the *Quorum*, &c. is also disabled, So as he cannot be allowed againe, except in open Sessions. See *hic antea.* Also in Townes which are no thorow-fare, the Justices shall doe well to be sparing in allowing of any Alehouse, (except it be at the suit of the chiefe inhabitants there, & to supply the necessary wants of their poore :) And then Kanikets (onely to sell to the poore, and out of their doores) would suffice, if they were enabled by a law.

The place. Also the Alehouses to be allowed, are meetest to be about the middest of

of the Towne; but not to be in any blinde corners, where Theeves and Rogues may bee harboured; nor in places out of, or distant from the Towne; except upon the Rivers side, and where there is great need.

Affray.

CAP. 8.

Affray, is derived of the French word *Effrayer*, which signifieth to terrifie, or bring feare; and which the Law understandeth to bee a common wrong; and therefore I will shew you what every man may do in such cases.

Every private man being present before, or in and during the time of an affray, ought to stay the Affrayors, and to part them, and to put them in sunder, but may not hurt them, if they resist him; neither may he imprison them, for that he is but a private man. *Every private man.*

An Affray being in the street, if any other shall come with harness or weapon, to joyne with either party, every person present, or that seeth it, may stay them till the Affray be over.

Lamb. 134.

Also every private man (being present) may stay the Affrayors untill their heate bee over, and then may deliver them to the Constable, to imprison them till they finde surety for the Peace: And upon their information it seemeth the Constable may imprison the parties, though the Affray were not in the Constables presence, *hic, cap. 1.*

3. H. 7. c. 1.
Br. Coron.
235.
10. H. 7. 20.

If any person be dangerously hurt in an Affray (or otherwise) every person may arrest the offender, and carry him to the Gaole, or to a Justice of Peace (who is either to baile him untill the next Gaole delivery, or to commit him to the Gaole, untill it be knowne whether the party hurt, will live or die thereon.) *Br. Faux impris. 35. 44.*

The Constable in such cases is armed with a more large authoritie, *The Constable.* within his jurisdiction, for he may and ought in the Kings name to command the Affrayors, or such as are about to make an affray, to avoid or surcease, and to depart (upon paine of imprisonment:) and if the Constable (being present at an affray) doth not his best endeavour to part them, it being presented by Enquest at the Sessions of the Peace, such Constable shall be deeply fined for it.

But where the affray is made out of the presence or sight of the Constable, and one commeth to the Constable and telleth him of it, and wissheth him to goe and see the Peace kept, and the Constable doth nothing, but neglecteth his duty therein, it seemeth he shall not be fined by the Justices at their Sessions, upon presentment thereof by the great Enquest. *Cromp. 146. quare tamen, & vide hic, cap. 1. & 5. the Commission, & 121. the forme of the Constables Oath.*

3. H. 7. 10.
Lamb. 135.

If the affrayors will not depart, but shall draw weapon, or give any blow, the Constable may command assistance of others for the pacifying of the affray, and may justifie the hurting of them, if they make resistance.

Lamb. 135.

The Constable may in the Kings name make proclamation, (if the affray be great or dangerous) that the Affrayors shall keep the Kings Peace and depart, &c. Also

Also if the affray be great and dangerous, then the Constables may command the Affrayors to prison for a small time, till their heat be over; yea, they may imprison the affrayors till they find sureties for the Peace. And if any of the parties hath received any dangerous hurt in the affray, the Constable ought to arrest and carry the offender to the Gaole, (or to a Justice of Peace) to the end he may finde sureties to appeare at the next Gaole delivery: and the Constable may justifie the beating, &c. of such an offender, if he will not obey the arrest, but make resistance, or flyeth.

Lamb. 136.
38 E. 3. 3. &
11.
Br. Faux
imp. 6.

Note, that it is properly no affray, unlesse there bee some weapons drawne, or some stroke given, or offered to be given, or other attempt to such purpose: for if men shall contend onely in hot words, this is no affray, neither may the Constable for words onely lay hands upon them unlesse they shall threaten to kill, beat, or hurt one another, and then may the Constable arrest such persons (to goe before some Justice of Peace, to finde sureties for the keeping of the Peace) and yet such threatening is no affray.

Hic cap. 12

If the affray be in an house, and the doores shut, the Constable may breake into the house to see the Peace kept, though none of the parties have taken any hurt.

If the affrayors flie into another mans house, the Constable (in fresh suit) may breake into the house, and apprehend the affrayors, 7 Ed. 3. 19.

If the affrayors flie into another County, the Constable (or Justice of Peace) seeing this, may in fresh suit pursue, or cause them to be pursued, and to be taken there; but they can then meddle no further, but (as every private person may do) to carry them before some Justice of Peace of the County where they are taken, to cause them to finde suretie for the Peace.

Plo. 37. 3.
Cromp. 146.
b. & 172 b.

But if the Affrayors flie into a Franchise within the same County, the Constable (or Justice of Peace) seeing this, may in fresh suit pursue and take them out of such Franchise.

Cromp. 146.

After the affray (it seemeth) the Constable, without a Warrant, cannot arrest the affrayors, except some person be in perill of death by some hurt there received.

38 H. 8. Br.
F. imp. 6.

The Justice. Every Justice of Peace may doe that, which every Constable or private man may doe by the common Law herein.

Besides, every Justice of Peace (within his limits) may presently after the affray commit the offenders, untill they have found surety for the Peace, if the affray were in his presence. And if the affray were not in his presence, yet upon complaint, or upon his owne discretion, he may after make his warrant to take or commit such offenders, untill they have found surety for the Peace. *Vide tit. Peace, & Suretie for the Peace.*

9 Ed. 4. 1.
Cromp. 195.
196.

If an affray bee made in the presence of a Justice of Peace, he may lay hands upon, and arrest the offenders to finde sureties for the Peace, and may take away their weapons. 21 H. 7. 22 b. *Moore.*

Br. Faux imp.
11. & 33.

And yet by some opinions, the Justice of Peace in cases of an affray to some purposes hath no further authority than every private man hath: for though the Justices of Peace (sitting in their Sessions, or out of their Sessions) may command a man to be attached, who shall make an affray in

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in their presence (and of such things done in their presence, they may make a Record, and certifie the same, which shall be a conviction of the offender) and the Justice of Peace may presently upon the fact command or send such offenders to the Gaole: yet the Justices cannot themselves attach or arrest any man (say they) for any affray, or other thing done in their presence, (no more than a stranger or private person may doe;) but after the affray they may make or grant out their Warrant to attach or arrest the offenders, and may then commit them to the Gaole, except they shall finde sureties for the Peace.

Every Justice of Peace (in his owne discretion, and *ex officio*) may binde all such to the Peace, as in his presence shall strike another, or shall threaten to hurt another, or shall contend onely in hot words. *Vide tit. Sureties for the Peace hic cap. 67.*

If any person be dangerously hurt in any affray (or otherwise) every Justice of Peace within the yeare and day after such hurt, may commit to the Gaole such offenders, there to remaine untill the day and yeare be expired; or that the said offenders shall finde sureties to appeare at the next generall Gaole delivery, to answer to the felony, if the partie hurt happen to die within the yeare after the hurt. *Vide Stat. 3. H. 7. cap. 1. & Exodus cap. 21. 18, 19.* If the party happen to recover, the offender shall pay to the party hurt, for losing his time, and also for his healing, *ibidem*.

But where the hurt shall be dangerous, or wound mortall, although the Justice may baile the offender, living the partie so hurt, yet it shall be better discretion for the Justice to commit the offender to the Gaole, there to remaine until there shal appeare some good hope of recovery in the other: And so Sir Nicholas Hyde advised at Cambridge Lent Assises, *Anno 5. Caroli Regis.*

If an affray or assault shall be made upon a Justice of Peace or Constable, they may not onely defend themselves, but may also apprehend and commit the offenders, untill they have found sureties for the Peace: the Justice of Peace may presently cause them to be arrested, and carried before another Justice, who may send them to the Gaole; And the Constable must commit them to the Stockes for the present, and after carry them before a Justice of Peace, or to the Gaole. *Vide hic postea s. 67. & 120.*

ARMOUR.

CAP. 9.

IF any person shall ride or goe armed, offensively before the Kings Justices, or any other the Kings Officers or ministers doing their Office, or in Faires, Markets, or elsewhere (by night or by day) in affray of the Kings people (the Sheriffe, and other the Kings Officers, and) every Justice of Peace (upon his owne view, or upon complaint thereof) may cause them to bee stayed and arrested, and may binde all such to the Peace or good behaviour, (or, for want of sureties, may commit them to the Gaole:) and the said Justice of Peace (as also every Constable) may seize and take away their armour, and other weapons, & shall cause them to be preised, and answered to the King as forfeited: and this the Justice of

of Peace may do by the first *Assignavimus* in the Commission. See hereof <sup>Lambert's
face of a
Const. 13.</sup>

So of such as shall carrie any Gunnes, Dagges, or Pistols that be charged; or that shall goe apparelled with privie Coats or Doublets, the Justice may cause them to finde sureties for the Peace, and may take away such weapons, &c. *Vide tit. Suretie for the Peace.*

And yet the Kings servants in his presence; and Sheriffes and their Officers, and other the Kings Ministers, and such as be in their companie assisting them, in executing the Kings Proceffe, or otherwise in executing of their office; and all others in pursuing Hue and Cry, where any felony, or other offences against the Peace, be done, may lawfully beare armour or weapons. <sup>2 H. 3. c. 3.
Co. 572.</sup>

Also (it seemeth) that any Justice of Peace may command that weapons be taken from such prisoners, as at any time shall be brought before him.

Also if any servant to husbandry, or to any Artificer, or Victualler, or any Labourer, shall beare any Buckler, Sword, or Dagger, (except they be travelling with their master, or in their masters message) it seemeth every Justice of Peace may imprison them till they have found sureties for the Peace, and may seize and take away their said weapons; (or may cause the Constable to seize the same, as forfeit) and to present the said weapons at the next Sessions of the Peace. But this Statute seemeth now to be repealed by the Statute made 21. Ia. 28. <sup>21. E. 3. c. 14.
P. 2.</sup>

Barrettor.

CAP. 10.

Every Justice of Peace (upon his discretion) may binde to the Peace, <sup>2 H. 4. c. 1.
Lamb. 79.</sup> or good behaviour, such as are common Barrettors.

Now a common Barrettor is he, who is either a common mover and stirrer up (or maintainer) of suites in Law in any Court; or else of quarrels or parts in the Country. *Co. L. 368.* ^{Co. 2. 16.}

In Courts.

As if in any Court of Record, County-Court, Hundred, or other inferiour Courts; any person, by fraud and malice under colour of Law, shall themselves maintaine (or stirre up others unto) multiplicitie of unjust and feined suits, or informations, (upon penall Lawes,) or shall maliciously purchase a speciall *Supplicavit* of the Peace, to force the other party to yeeld him composition; all such are Barrettors.

In the Countrey.

In the County; and these are of three sorts :

1 Disturbers of the Peace, *viz.* such as are either common quarrellers or fighters in their owne cause; or common movers or maintainers of quarrels and affrayes betweene others.

2 Common takers or detainers (by force, or subtilty) of the possessions of houses, lands, or goods which beene in question or controversie.

3 Inventers and sowers of false reports, whereby discord ariseth, or may arise betweene neighbours; all these are Barrettors. ^{Co. 2. 16.}

Yea if one be *communis seminator litium*, he is a Barrettor.

Or if any man of himselfe, bee *communis oppressor vicinorum*, (a common

mon oppressor of, or wrangler with, his neighbours) either by unjust, or wrangling Suits, or other oppressions, or deceits, he is a Barrettor.

Or, if one be *Communis pacis perturbator, Calumniator, & Malefactor*, he is a Barrettor. *Cromp. 257.*

But all such persons must be Common Barrettors, *sc.* not in one or two, but in many causes.

Bastardie. CAP. II.

Every Justice of peace, upon his discretion, may binde to the good behaviour, him that is charged, or suspected to have begotten a Bastard child, to the end that he may be forth coming when the child shall be borne; otherwise there will be no *Putative* father, when the two Justices (after the birth of the child) shall come to take order according to the Statute of 18. *Eliz. 3.* The like may be done after the birth of the child, and before such order taken.

Also if the *Putative* father of any such child, either before the birth of the child or after, shall by any perswasion, procurement, or other practice, be convaied or sent away, or shall run away, so as the Justices of peace cannot come by him, or so as the order of the Justices by means thereof shall not be performed; it seemeth every Justice of peace, upon his discretion, may binde to the good behaviour, and so over to the next generall Gaole delivery (before the Judges of Assise) or to the next quarter Sessions, such as shall have any hand in such practice, &c. So of such as by practice, &c. shall cause the mother of the child to bee convaied or sent away, or to run away, whereby shee leaveth her child to the charge of the Towne, &c. *vide hic cap. 103.*

Two Justices of peace (one being of the *Quorum*) in or next to the limits where the Parish Church is, in which Parish any Bastard child (begotten and borne out of lawfull matrimony) shall be borne, upon examination of the cause and circumstances, shall and may take order by their discretion, as well for the releefe of the Parish (in part, or in all) and keeping of the child, (by charging the mother or reputed father, with the payment of money weekly, or other releefe) as also for the punishment of the mother and reputed father, 21. *Jac. 6. 28. & 3. Carol. 4.*

But such a Bastard child must bee one that is left to bee kept at the charge of the Parish; or one likely to be, (or which may bee) chargeable to the Parish. See the Stat. of 18. *Eliz.* and the Stat. 7. *Jac. cap. 4.*

The (reputed) father, by the Law of God, was to give unto the maides father: 50. *Shekels of silver*; and he also was to take her to his wife. *Exod. 22. 16.* and *Deut. 22. 28, 29.* wherewith agreeth the *Canon. 67.* *Apostol: Quam quis violaverit virginem, ducat in uxorem.*

If the two Justices cannot agree upon their order, what is then to be done, see *hic antea cap. 6.* But by some opinions, the words of this Statute being (disjunctive) two Justices of P. in, or next to, the limits, &c. if the two Justices of peace in that division or limits cannot agree, then the two Justices of peace next to that division or limits, (being within the same County, and one of them of the *Quorum*) have power to take order therein. *quere inde.*

Also it seemeth the mother may be examined upon oath, concerning the

the reputed father, and of the time, and other circumstances; for that in this case the matter and the tryall thereof dependeth chiefly upon the examination and testimony of the mother. *Vide hic cap. 66. & Lamb. 517.*

By the Statute 7. *Jac.* it appeareth that the Justices of the peace shall now commit such lewd women to the house of correctiō, there to be punished, &c. And therefore it seemeth that the Justices of peace may not punish (by corporall punishment) the mother by force of this Statute of 18. *Eliz.* 3. and then to send them to the house of correction, for the rule of Law is, *Nemo debet bis puniri pro uno delicto*; and the Divine saith, *Deum non agis bis in idipsum*, Co. 4. 43, & 8. 118.

But such corporall punishment, or cōmitment to the house of correction, is not to be untill after that the woman is delivered of her child, neither are the Justices of peace to meddle with the woman untill that the child be borne (and shee strong againe) lest the woman being weake, or the child wherewith she is, happen to miscarrie: for you shall finde that about 31. *Eliz.* a woman great with child, and suspected for incontinencie, was commanded (by the Masters of Bridewell in London) to be whipped there, by reason whereof she travelled, and was delivered of her child before her time, &c. And for this the said Masters of Bridewell were in the Starre. Chamber fined to the Queene at a great summe, and were further ordered to pay a summe of money to the said woman.

After such order by two such Justices, subscribed under their hands, if the said mother, or reputed father, upon notice thereof shal not performe the said order, then such person so making default, shall be committed to the Gaole, there to remaine without baile or mainprise, except such parties shall put in sufficient sureties to performe the same order, or else personally to appeare at the next generall Sessions of the peace, in that Countie, and to abide such order as the Justices of P. or the more part of them, then and there shall take in that behalfe, (if they shall take any) or in default thereof, then to abide and performe the order before made.

Nota que Enfant nee per xi. dies post ultimum tempus legitimum mulieribus constitutum, (sc. post 40. Semaines. apres mort son pere,) ne sera adjudge legitimum puerum, &c. Co. L. 123. 2 Esdras 4. 40. 41. Et isint semble de Enfant nee apres 40. Semaines del temps que feme charger home daver Carnall Conusance de luy, tiel Enfant ne sera adiudge ne repue estre le issue de tiel home.

Every lewd woman which shall have a Bastard, which may be chargeable to the Parish, the Justices of peace shall commit such woman unto the house of correction, there to be punished and set on worke for one yeare: and if she shall eftsoones offend againe; then to be committed to the house of correction, as aforesaid; and there to remaine untill she can put in good sureties for her good behaviour, not to offend so againe.

Now it seemeth that such cōmitment to the house of correction ought to be by two Justices at the least (by the words of this Statute) and then by the conference of these two Statutes (of 18. *Eliz.* and 7. *Jac.*) it seemeth fittest for the two next Justices authorized by 18. *Eliz.*

It seemeth also (by the words of this Statute 7. *Jacobi*) that such a woman shall not be sent to the house of correction, untill after the child be borne,

borne, and that it be living; for it must be such a child as may be chargeable to the Parish.

Also it seemeth that such a Bastard child, is not to be sent with the mother to the house of correction, but rather that the child should remaine in the Towne where it was borne, (or settled with the mother) and there to be releevd by the worke of the mother, or by releife from the * reputed father : See to this purpose the Resolution of the Judges, *Resol. 6.* in the title *Rogues* : and yet the common opinion and practice is otherwise, *sc.* to send the child, with the mother, to the house of correction; And this may also seeme reasonable, where the child sucketh on the mother. *vide plus. cap. 6. sine. & cap. 40. Resol. 7. & Quere.*

Baylement. CAP. 12.

BY the common Law, the Sherieffe, and every Constable, (being conservators of the Peace) might have bayled a suspect of felonie : but this authority seemeth to be taken from them, and given to the Justices of Peace by the Statutes following.

First, by the Statute 1. R. 3. cap. 3. every Justice of Peace had authority (by his discretion) to let to bayle persons imprisoned for suspicion of felonie, &c.

But for as much as after the making of that Statute, divers not being bayleable, were notwithstanding let to bayle, and so, many notable felons escaped, therefore this Statute was repealed by the Statute of 3. H.

7. And thereby any two Justices of Peace (the one being of the *Quorum*) were enabled to let any prisoners (mainpernable by the Law) to bayle, to the next generall Sessions of the Peace, or Gaole delivery, as the case should require. After, for that one Justice of Peace in the name of himselfe, & of one other of his fellow Justices (not making the other Justice privie unto the cause wherefore the prisoner should be bayled) did oftentimes by sinister meanes set at large great and notable offenders, such as were not bayleable, and yet to hide their affection therein, did signifie the cause of their apprehension, to be but onely for suspicion of felony, whereby the said offenders have escaped unpunished; for reformation whereof, by the Statute 1 & 2. P. & M. it was enacted, That if it be for manslaughter, or felony, or suspicion of manslaughter or felony, then the same Justices must bee present together, at the time of the said bailement; and that they must certifie (in writing subscribed with their owne hands) the said bailement at the next generall Gaole delivery, to be holden within the County where the person shall be arrested or suspected, upon paine to bee fined by the Justices of Gaole delivery.

Now by the Preamble of both last recited Statutes, the mischief seemeth to bee the escape of felons; and therefore if it be not in case of felony, it seemeth any one Justice of Peace alone, may bayle a prisoner; (see the titles, *Affray*, *Dying*, and *Surety for the Peace* :) except where some particular Statute shall otherwise prescribe, as in titulo *Counterfeiters*. See more of Baylement, *hic postea, cap. 114.*

Four Just. **W**Here a decayed Bridge is, and that it cannot be proved who, nor ^{22.H.3.} what lands be chargeable to the repairing thereof, four Justices of ^{P.37.} Peace (whereof one to be of the *Quorum*) within the Shire, or Riding, wherein such decayed Bridge beene (out of Cities, and Townes corporate; and if it bee within a City or Towne corporate, then foure such Justices of Peace there) may within the limits of their severall Commissions, call before them the Constables, or two of the most honest inhabitants of every Towne and Parish within the shire, Riding, Citie, or Towne corporate, wherein such Bridge, or any parcell thereof shall happen to be; and the said Justices (upon the appearance of such Constables, or other inhabitants, and with their assents) may taxe every inhabitant in any such City, Towne, or Parish (within their limits) to such reasonable summe of money, as by their discretions they shall thinke convenient, as well for the repairing of such Bridge, as also for the making and repairing of any High wayes, lying next adjoyning to the end of any such Bridge within this Realme, distant from either of the ends of the Bridge by the space of three hundred foot.

After such taxation made, the said Justices of Peace shall cause the ^{P.41} names and sommes of every particular person, so by them taxed, to bee written in Roll indented.

Also the said Justices shall make two Collectors of every Hundred, ^{P.3.} for the collecting of all such summes of money, by the said Justices set and taxed; which Collectors receiving the one part of the said Roll indented, under the seales of the said Justices, shall have power thereby to collect all the particular summes of money therein contained; and to distraine such as shall refuse to pay the same, and to sell such distresse, delivering to the owner the overplus of the money, if there be any.

Also the said Justices shall appoint two Surveyors, which shall see such ^{P.41} decayed Bridges, and wayes, repaired and amended from time to time, as often as need shall require; to whose hands the said Collectors shall pay the said summes of money by them received.

The said Collectors and Surveyors, and their executors and administrators, and every of them shall from time to time make a true account ^{Ibid.} to the said Justices of Peace, of the receipts, payments, and expences of the said summes of money: And if any of them refuse so to doe, then the said Justices of Peace from time to time (by their discretions) may make out Proceffe against the said Collectors and Surveyors, their executors & administrators by attachments, precept or warrant, under their seals, returnable at their generall Sessions of the Peace.

Also the said foure Justices of Peace may allow such reasonable costs ^{Ibid.} and charges to the said Surveyors and Collectors, as by their discretions they shall thinke convenient.

If any such Bridge shall lie wholly in a City, or other corporate Town, ^{P.41} the inhabitants of the Shire or Riding, shall not bee charged therewith, but

but such Bridge shall be made and repaired by the inhabitants of such Citie or Towne corporate.

Ibid. If any such Bridge be without Citie or Towne corporate, the same shall be made and repaired by the inhabitants of the Shire or Riding within which the same Bridge shall be.

Ibid. If part of any such Bridge be in one Shire, Riding, Citie, or corporate Towne, and part in another, then every of them shall be charged to make and repaire such part as shall lye and be within their limits, &c.

Mag. Chart. 15. P. 10. W. 1. c. 1. But otherwise no Village or Freemen shall be compelled to make any Bridge, but such as of old time, and by right they had wont to make; and that they and their Ancestors have used time out of minde, to make the same; or that they hold certaine lands to make the same: for though a man of his owne accord, hath made or amended a Bridge, yet shall hee not be thereto constrained at another time; and yet if a man and his Ancestors, or a Corporation, &c. have time out of minde used to doe such things, although they did it of their owne free minde and accord, and not of right, nor have any land, by reason whereof they may be tied, yet such continuance shall conclude them and their heires, or successours. And so of High wayes, 21. *Ed. 4. 46.*

Where a man and his Ancestors or Predecessors have used time out of minde to repaire a Bridge, the King cannot acquite or discharge them thereof. *Fitz. Gri. 94.*

Where it is presented that *I. S. ratione tenuræ sue*, hath used to repaire such a Bridge, this implyeth a Prescription, 21. *E. 4. 38. Crompt. 186.*

But a Presentment that *I. S.* and his Ancestors have used to repaire such a Bridge, this is no good prescription to charge the heire (by the act of his Ancestor) without some profit to be taken therefore, 17. *Aff. 8. Crompt. 187.* See the next case but one.

Otherwise it is of a corporation, spirituall, or temporall, they by reason of usage time out of minde, &c. may be charged at this day, to repaire a Bridge, although they have no land by reason whereof to be charged, for that such a body never dieth. *Ibid.*

Also where a man hath once repaired a Bridge, and that afterwards the same was not repaired within the memory of man, by some opinions, he or they which have his estate in land, shall be bound to repaire the Bridge; for that it shall be supposed to have beene done at the first, by reason or cause of his Tenancie, except some other particular cause of the doing thereof, shall be proved: But where the cause shall appeare, there *Cessante causa, cessabit effectus.*

P. Bridges 1. He that hath his land adjoyning to such Bridge, is not chargeable to make or repaire the Bridge, except where they have made it by Prescription, 8. *H. 7. fol. 5. b.*

Crompt. 186. b. & 187. b. 17. Aff. pl. 20. per Greene. By common right Bridges shall be amended by the whole Countie, for that it is for their common good and ease; and yet if any have fishings, or other profit in that river, they in reason and *law (as it seemeth) are chargeable; and therefore the Justice of peace in good discretion may tax such, proportionably to their profit.

Where men are charged by their tenure or lands, every owner or occupier of such lands are to be charged proportionably to their said lands. *Vide tit. Sewers, & Fitz. 235.b.*

Such as are chargeable to repaire a Bridge, may enter upon any other mans lands or soile adjoyning, and may lay their stone, lime, timber, or other things necessary for the repairing and amending thereof, and the owner of the lands shall have no action therefore, for it is for the common profit, &c. 43. *Aff. 37. Fitz. A. sise 353.* Co. 11. 32.

Yea, where one is chargeable to repaire a Bridge, hee must also maintaine the way at each end thereof, (though the soile be to another;) and if the ends be broken by the water-courfe, hee must follow the water-courfe, and repaire the way, &c. *Crompt. 186.b.*

If a man maketh a Bridge for easement to his Mill, and that decayeth, the party, nor any other shall be charged to repaire this, for it is no common passage. *Fitz. Barr. 276.* Crompt. 187.

Cloth.

CAP. 14.

One Justice. Every Justice of Peace may enter in and upon any houses, lands, or grounds, and make search for any teynters, wrinches, or other engines whatsoever, whereby any deceit may be used in or about the stretching of any woollen cloth; and may utterly deface the same teynters, &c. and for the second offence may sell them away to the best value thereof. But the disposing of such money shall be by two Justices. See *hic postea.* 39. Eliz. 20. 41. Eliz. 20. P. Drapery. 118. 127.

And if upon information made to any Justice of Peace, of any such teynters, &c. hee shall not make search and execute this Law within seven dayes, he shall forfeit for every such default, five pound.

Also one or two of the Justices of peace of the Shire next adjoyning to any City, Borough, or Towne corporate within England, may joyn with them of such City, Borough, or Town corporate, in appointing the yearly Overseers for such clothes, &c. *ibidem.* P. Drapery. 115. 127. 1.

Two Justices. Any two Justices of Peace, within their limits, may once every year appoint Overseers or Searchers (for that whole year following, or for a shorter time, at their discretions) of any woollen cloth, to be made or sold in any Town not being corporate, and may charge them upon their oathes, and binde them in Recognisance of forty pound a peece, to doe their best indeuours by all lawfull wayes and meanes, for their time, to see the statute of 3. E. 6. cap. 2. and of 39. Eliz. cap. 20. in all points truly observed, and kept within their limits (sc. within the Towne or Parish where the said Overseers shall be dwelling,) the particulars seeme to be these: 3. E. 6. 3. 39. Eliz. 20. 43. Eliz. 20. P. Drapery. 45. 125. 118.

1 That the weights, lengths, and bredths of all woollen cloathes, bee according to the Statutes, 39. Eliz. See the Statute 4. Jac. cap. 2. & 21. Jac. cap. 18. P. Drapery. 114.

2 That every such cloth have a seal of lead, containing the just length and weight, 39. Eliz.

3 That such cloth be not stretched or strained, 39. Eliz.

4 Where

4 Where there be any Teyaters, Wrinches, or other such engine, for the stretching of cloth, *34 Eliz.*

5 That no iron cards or pickards be occupied in any woollen clothes, *3. Ed. 6. cap. 2.*

6 That clothes or woolls be not falsely dyed or coloured, *3. E. 6.*

7 That no haire, flocks, thrums, yarne made of lambs wooll, chalke, flower, or startch, or other deceivable thing, bee put in or upon any woollen cloth. See *3. Ed. 6. & 43. Eliz. cap. 10. & 4. Jac. cap. 2. & 21. Jac. Regis cap. 18.*

8 That no clothes be in any deceivable manner pressed, to be put to sale, *3. Ed. 6.* See also the Statute of *5. Ed. 6. cap. 6. & 21. Jac. cap. 18.*

Any two (or moe) Justices of Peace within the County, Citie, Borough, or Towne corporate where deceivable cloth shall bee made, or suspected to be made (upon complaint or information of any Overseer, Searcher, or any other, of any such offence) may grant their Warrant to call before them any person or persons, that in their discretion shall be thought fit to discover any such offence, And may examine upon oath any such persons for the trial and better finding out of the said offence. And if upon such examination it shall be found by testimony of two witnesses (or moe,) or by the confession of the offender, that any such offence hath beene committed, the same shall be a sufficient conviction of the offence; and then the said Justices shall or may certifie such offence unto the Church-wardens, and Overseers (for the time being) of the poore of the Parish, where such deceivable cloth shall bee made, under the hands and seales of the said Justices: And upon such certificate, and a warrant made by the said Justices, to the said Overseers and Church-wardens for the levying of the forfeiture, The said Overseers and Church-wardens, or any of them, or their or any of their successors, immediately from and after such certificate and warrant delivered to them or any of them, may levie the summe or summes of money, which by the said certificate and warrant shall appeare to be forfeited, by way of distresse and sale of the offenders goods, rendring to the offender the overplus, &c. And in defect of such distresse, the said two Justices may commit the offender to the common Gaole, there to remaine without baile, untill payment shall be made of the summes so forfeited to the said Overseers, and Church-wardens, or some or one of them, &c. *21. Jac. 18.*

These Overseers, or two of them, shall (or may) from time to time, or once every moneth at least, goe into all or any houses, shops, or other roomes of any Cothier, Draper, Cloth-worker, or other person where such Cloth shall be, or shall be suspected to be, and there to make due search and triall, &c. Stat. *39. Eliz. cap. 20. & 21. Jac. Regis cap. 18.*

Also the same Overseers shall fix unto every Cloth (by them viewed) a seale of Lead, containing the length and the weight of every such cloth, together with this word, Searched, or Faulty, if there be cause. *21. Jac. 18.*

And every Overseer of cloth, appointed by any former law, (now in force) to fix unto any kinde of cloth a seale of Lead, shall engrave or set

The Overseers duty.

set upon every their seales of Lead (which they shall fix unto any cloth by them to be sealed) his Christen and Sirname: And no cloth to be sealed with any seale of Lead which shall want such ingraving or print, shall be allowed to be sufficiently sealed, 21. *Jac. Regis cap. 18.*

Also the said Overseers shall seise and carrie away as forfeit, all such cloth, as upon their search they shall finde not to be sealed with a seale containing the just length and weight: and shall present the same cloth to the Justices of peace at the next quarter Sessions of the peace. 39. *Eliz. 20.*

And if the said Overseers shall finde any false seale set upon any cloth; or any cloth to be stretched, or strained, they shall present such defaults, at the said next Sessions, together with the names of the owners of such cloths. *Ibidem.*

But cloth once lawfully searched, viewed, weighed, and sealed by the Overseers and Searchers of the parish, towne, or place, where the said clothes bee made, shall not afterwards bee viewed, searched, or weighed, by any other person or officer whatsoever. 4. *Jac. cap. 6.* & 21. *Jac. cap. 18.*

And if the said Overseers shall finde any such Teynters, Wrinches, or Engines (for the stretching of cloth) they shall deface the same; and for the second offence therein, they shall take away the said Teinters, &c. and shall sell the same to the best value thereof, And by the consent of two Justices of peace shall dispose the money thereof, to the poore of that parish. *vide 21. Jac. cap. 18.*

If any person commanded by two Justices of peace to appeare to bee made an Overseer according to this statute, doe (without reasonable excuse) refuse to come, and to take upon him that office. he shall forfeit for every such refusall five pounds, the one halfe to the King, and the other halfe to those two Justices; and shall remaine in ward to the Sheriffe, untill hee hath paid the same forfeiture, or put in sureties for the same, 39. *Eliz. cap. 20.*

The money that shall be made, upon the sale of any teinters, wrinches, and other such engines, shall be disposed (to the poore of the Parish, where the said teinters, &c. shall be found) by the consent of any two Justices of peace, within the same County. *P. Drap. 118.*

But by the Statute 7. *Jacobi*, certaine cloths made within the County of Cumberland, Westmerland, and Lancaster, shall not be subject to search, &c. Also by the statute 3. *Jac. cap. 1. 7.* Welch Cottons shall not be searched, nor tried: Neither need they to have any seale containing their length, or weight. *7 Jac. 16.*

All penalties and forfeitures for want of length, breadth, and weight of cloth, limited by any statute now in force, shall be distributed into three parts equally; whereof one third part shall be unto the Searchers, finding and certifying the same, &c. And the other two parts shall bee unto the poore of the Parish where the said cloth shall be made, The said two parts to be levied by way of distresse, and sale of the offenders goods, &c. upon a warrant from two Justices of peace, &c. 21. *Jac. ca. 18.*

If any person (which shall retails any of the Clothes, Kersies, Frizes, Rugs,

*5. Ed. 6. 4.
P. 100. 31.*

Rugs, or Cortons, of the severall makings specified in the statute 5. Ed. 6. cap. 6.) doe present any such woollen cloth which is defective or faultie, unto two Justices of peace, next adjoyning (out of a Citie, Borough, or Towne corporate) where such cloth shall bee found faultie, the same Justices shall cause the same cloth to bee cut into three equall peeces, whereof the King shall have one, the presenter another, & the third the said Justices shall retaine to themselves.

7. Jac. 7.

Any two Justices of peace may take order between the Clothier and his Spinsters, Carders, Kembers, Sorters, and Weavers, which shall unjustly, or deceitfully convey away, imbesill, sell, or detaine any part of the wooll or yarne delivered to them: and that as well everie such Spinster, &c. so offending, as also the buyers & receivers (knowing the same to be imbesilled) being thereof convicted, by the confession of the partie, or by one sufficient witness upon oath, before two such Justices, shall give such recompence to the partie grieved, for such their losse and damage, as by the said Justices shall be ordered; & if such offender shall not be thought (in the discretion of the said Justices) able, or doe not make recompence according to such order, then such offender is to be whipped, or set in the Stockes (in or neere the place where the offence was committed) at the discretion of the said Justices. And such two Justices have full power to minister the oath to such witnesses, and finally to heare, end, and determine the said offences.

1. Jac. 6.
P. Ind. 66.

Clothiers and other Masters, that shall refuse to pay such wages (to their Spinsters, Weavers, or other work-men whatsoever) as shall bee assessed at the Sessions, by the Justices of peace, and shall be thereof convicted before any two Justices of the peace, (one being of the *Quorum*) upon their owne confession, or upon prooffe by two sufficient witnesses, shall forfeit for every such offence, x. s. to the partie grieved, the same to be levied by distresse and sale of the offenders goods, by warrant from the same Justices.

1. Eliz. 12.
Raffal. 149.

Two Justices of the peace (one being of the *Quorum*) may take the information of stretching, or other deceitfull using of Linnen cloth, (by him that hath seised it) and of his seiser thereof, and may binde the said seiser to give in evidence, and to pursue the same matter with effect (at the next Sessions, &c.) and also to pay the moitie of all that he shall recover, to the use of the Kings Majestie, &c.

Linnen
cloth.

Corne. CAP. 15.

5. H. 6. 14.
13. Eliz. 15.
P. Forestal. 6.

THe certificate of one Justice of Peace (joynd with the Customer of the place) of the unlading and selling of Corne or Cartell, carried by water from one place to another of this Realme, unto the Customer and Controller of the place where the same was imbarqued, is sufficient upon the stat. of fore-stalling. See more of corne *titulo Transportation.*

Constables.

Constables. CAP. 16.

Constable, this word is derived or deduced of two old *Saxon* words, Cuning, or Kining, which signifieth King, and stable: stability; shewing that these ancient Officers were reputed to be as the stability or stay of the King, and Kingdome. *Lamb. 5. Dodd. 73.*

Every Justice of peace may cause two Constables to be chosen in each Hundred, *Lambert. 190.* and this seemeth to be meant of the high Constables of Hundreds, and to include and imply of congruence the swearing of them; and seemeth to bee by vertue and force of the Statute of Winchester made 13. *Ed. 1.* and of the Commission, the first *Assignavit*, or clause.

And by the Statute of 34. *H. 8. cap. 26.* two Justices of peace, the one being of the *Quorum*, may appoint the High Constables in Wales.

And yet the usuall manner is, that these High Constables of Hundreds be chosen either at the quarter Sessions of the peace, or if out of the Sessions, then by the greater number of the Justices of peace of that Division where they dwell: and likewise that they bee sworn either at the Sessions, or by warrant from the Sessions; which course hath also beene often allowed and commended unto us by the Judges of Assise.

Also in such manner as they are to be chosen, in the same manner, and by the like authoritie are they to be removed, for, *eodem modo quo quid constituitur, dissolvitur*, so as if there shall bee cause to remove and put an High Constable from his place, it hath not been thought fit that any one or two Justices of peace should doe it upon their discretion, but that it should be done by the greater part of the Justices of that Division, and that for some just cause; or else that it be done at and in the generall Sessions of the peace: and so was the direction of Sir *Iohn Doddridge* at Summer Assises at Cambridge. *Ann. Dom. 1620.*

By the opinion of Master *Lambard* and others, these Constables of Hundreds were first ordained to bee chosen by the the said Statute of Winchester *tempore Ed. 1.* And they were to make view of armour twice every yeare, and to present before Justices assigned, defaults of armour, of watches, of high wayes, and of Hvy and Cry, and also all such as lodged strangers, for whom they would not answer. See *Rastal. 379. c.d. Lamb. dutie of Const. 5. Minsh. verbo Const.*

Petty Constables (in Townes and Parishes) were after devised (for the aid of the Constables of the Hundred) *viz.* about the beginning of the raigne of King *Ed. 3.* as it appeareth by M. *Lambert* in his Book of the Duties of Constables, pag. 9. See Stat. 4. H. 3. cap. 3. & 10.

But it appeareth by *Fineux*, 12 *H. 7. fol. 18. a.* that whereas the Sherifes of the Counties, at the first had the government of their Counties committed to them, that afterwards by reason of the multitude of people, and for that it was too great a thing for one person, (*sc.* the Sheriffe) to undertake, therefore Hundreds were deduced and derived out of the Counties, and in every Hundreds there was ordained a Conservator of the peace, who was called the (High) Constable; and after, Borroughs or

or Townes were made, and within every of them also was ordained a Conservator of the peace, who is called the petty Constable (and in some places the Burrough-head) and this was long before the times that Master *Lambard* speaketh of, *sc.* long before *King Ed. 1.* or *King Edw. 3.* which also may appeare by the derivation of the word Constable, *hic supra*, and that they were in the time of the *Saxons*, so that it may seeme, that as well the high Constables, as the petty Constables, and their authorities, were by the Common Law; and that the old Statutes concerning them, are but a recitall of the ancient Common Lawes.

The chusing and swearing of these petty Constables, is reputed properly to belong to the Court Leet: yet wee finde it usuall and warranted by common experience, that every Justice of peace doth also swear them, and upon just cause doth and may also remove them. See the title *Warrantis cap. 121.* *One Justice.*

But in ancient time, both the High Constables of Hundreds, as also the petty Constables of every Towne were yearly appointed by the Sheriffe in his Torne, and were there sworne, or received their oath: And they may still be chosen or appointed, and sworne in the Sherifes Torne, as well as in the Leet.

Constables lawfully chosen; if they shall refuse to be sworne, the Justice of P. may binde the over to the Assises, or Sessions of the peace.

And here for the beter chusing of these Constables, you shall understand, that the Law requireth that everie Constable bee *Idoneus homo*, that is, apt and fit for the execution of the said office, And he is said in Law to be *idoneus*, who hath these three things, Honestie, Knowledge, and Abilitie.

Honestie, to execute his office truly, without malice, affection, or partialitie.

Knowledge, to understand what he ought to doe.

Abilitie, as well in substance or estate, as in bodie, that so hee may intend and execute his office diligently, and not through impotencie of body, or want, to neglect the place.

For, Constables cho'sen out of the meaner sort, They are either ignorant what to doe; or dare not doe that they should; or are not able to spare the time to execute this office: They are therefore to bee able men; And are not to be chosen, either by the house, or other Custome.

And if any shall be chosen Constable, which is not thus inabled and qualified, he may by Law be discharged of his said office, and another fit man appointed in his place.

Leetes chosing unable, or unfit petty Constables, is cause of forfeiture of the Leete; And such choise is voide. And two Justices of peace may remove such a Constable, Or rather the Lord of the Leet would be deale withall to choose fitter Constables; and upon his default, complaint is to be made at the Assises, or Sessions of the peace: from thence a warrant to be granted to the Justices of peace to choose and swear others more fit. And so was the direction of the Judge of Assise at *Cambridge Anno 8. Caroli Regis.*

For the Duties of a Constable, see their Oath *hic. cap. 121.*

Counterfeits.

Stat. 5. 6.

Co. 2. 41.

Co. 2. 42.

Counterfeiters. CAP. 17.

Two Justices.

Two Justices of peace, the one being of the *Quorum*, may convent by Proceſſe, or by their Warrant (*ſc.* may grant their warrant to attach and binde over) to the next generall Sessions of the peace, or Aſſiſes, any person that is suspected of any deceitfull getting into his hands, any money, goods, or other things of any other persons, by meanes or colour of any false tokens; or counterfeit letter made in any other mans name; there to bee examined and ordered. Also it seemeth, the said Justices may call or convent before themselves the offenders, and after due examination, &c. may imprison such offenders, or bayle them untill the next generall Sessions, or Gaole delivery. In this case, the said Justices of peace shall doe well to take examination of the offence, and to certifie the same to the said Sessions, or Gaole delivery; and withall to binde over the Informers and Witnesses, to give evidence therein.

Also it seemeth that any one Justice of peace may binde such offenders (as Cheators) to their good behaviour, and so to the next Aſſiſes, or Sessions of the peace: or else (by force of the Statute. 7. Jac. cap. 4.) may send such offenders (as idle and disorderly persons) to the house of correction, there to be continued untill the next Aſſiſes, or Sessions, and then and there to be forth-comming &c. Yet *quære* of sending them to the house of Correction: and it seemeth more warrantable if they be sent to the house of Correction, by order of the Sessions.

Dying. CAP. 18.

One Justice.

Vpon information given to any Justice of peace against any person suspected to offend this Statute concerning the using of Logwood, *alias* Blockwood, in dying, such Justice may by his Warrant, or other commandement, cause to come before him, and may examine by oath, or otherwise, the servants or workmen of such suspected offenders, and other persons able to disclose the offence: And upon finding the same (*ſc.* that any person hath used, or caused to be used, in the dying or colouring of any cloth, wooll, yarne, grogeraine, buffins, or silke, or any thing made of woollon yarne, or silke, any Logwood) the said Justice shall binde with sureties (to the next Gaole delivery, or quarrer Sessions of that County) as well such suspected offenders, there to make answer for their said offence, as the examiners, which doe discover the offence; and shall also certifie thither the said examinations: And if such suspected offender shall refuse to be bound, then may such Justice send such suspect to the next Gaole, there to remaine, till he or shee shall become so bound with sureties.

Two Justices.

Any two Justices of the Peace of the Countie where any Logwood shall be found (in whose hands soever it shall be) may cause the same to be burned.

Egyptian.

Egyptian. CAP. 19.

EVery Justice of peace, Sheriffe, and Esccheator, may seise all the goods of any Outlandish persons, calling themselves Egyptians, that shall come into this Realme, within one moneth after their arrivall, and may also keepe the one moitie thereof to his owne use, making account to the King in the Exchequer for the other moitie. And every person that can prove by two credible witnesses (before the said Justice or other officer, that so seiseth the said goods) that any of those goods were craftily or feloniously taken from him, shall incontinently be restored there-to (by the partie that so seiseth them) upon paine of the double value thereof to be forfeited by such seiser to such prover.

But note, that after the moneth the offence is made felony, by the Statute of 1. & 2. Ph. & Mar. cap. 4. & 5. Eliz. cap. 20. P. 2. And then it seemeth the King is to have the goods wholly: And *quare* whether the Statute of 12. H. 8. be still in force, or be altered by the said Statute of 1. & 2. Ph. & Mar. cap. 4. & 5. Eliz. cap. 20.

Felonie. CAP. 20.

EVery Justice of Peace (by force of the Commission, the first *Assigna-vimus*) may cause fresh suit, Huy and Cry, and search to bee made, by the Sheriffe, Bailiffes, Constables, and others, upon any robberie or theft: and also may cause the Constables to arrest, and to imprison all such as shall be suspected to be theeves, murderers, or felons. *Lamb. 190.*

Also, every Justice of Peace may and must take the examination of all such felons, or persons suspected for felonie, as shall be brought before him. See *hic cap. 3.*

2 And must take information against them (of those that bring them) *sc.* of the fact and circumstances of the felonie and fact.

3 And must put in writing such examinations and informations, or so much thereof as shall be materiall to prove the felonie; and must certifie the same to the next generall Gaole deliverie.

4 And after such examination, and information taken, then the Justice must commit such Felons to the Gaole, or may baile them, if they be baileable; but then there must be two Justices together, and the one of them of the *Quorum*. See *postea tit. Bailement cap. 114.*

5 And must binde over (by Recognizance) the informers (that doe declare any thing materiall to prove the felonie) to appeare, and to give evidence against the Felon, at the next generall Gaole deliverie, to bee holden within the Countie, Citie, or Towne corporate, where the triall of the said felonie shall be.

If such informer bee unable to travell, &c. then the Justice of Peace may take his information upon oath, and may certifie the same *ut supra*, &c. and may forbear to binde such informer to appeare personally

before the Justices at the Gaole deliverie, &c.

If the Justice of Peace shall not certifie such examinations and informations to the next generall Gaole deliverie; or if the Justices of Peace shall not certifie their bailement; or shall not binde over the informers to appeare, and to give evidence against the Felon, at the next generall Gaole delivery, as aforesaid; The said Justice of Peace shall be fined (for every such default or offence) at the discretion of the Justices of Gaole delivery. 1. & 2. & 2. & 3. *Ph. & Ma.*

But yet if it be for pettie Larcenie, or other small felonies, the Justice of Peace may binde over the informers, and may certifie the examinations, and informations, to the next quarter Sessions of the Peace; and this was the advice and direction of Sir *David Williams*, Knight (late one of the Justices of the Kings Bench) at the Assises at Cambridge; For, said he, it was not meet to keepe poore prisoners in the Gaole for small matters or felonies, from one Assises till another, and therefore he gave order, that the Justices of Peace (at their generall Sessions of the Peace) should trie and deliver offenders for small felonies.

Besides, the Justices of Peace of every Countie, as well by vertue of their Commission, as also by force of the Statutes of 18. *Ed. 3. 2. 34. Ed. 3. 1. & 17. R. 2.* have authoritie to proceed to the delivery of Felons, and to heare and determine, and to give judgement upon all felonies, whereof any person shall be indited before them, and are not restrained by the Statutes *Ph. & Ma.* but that they may proceed therein before the coming of the Justices of Assise and Gaole delivery. The words of the Commission to that purpose are *Assignavimus vos Iusticiarios nostros ad pacem, &c. Ac etiam ad inquirend. de omnibus & omnimodis felonis, &c. Et ad omnia & singula felonias, &c. audiendum & terminandum, & ad delinquentes castigandum & puniendum, Vi. Plo. 485. b.*

And for that purpose also the aforesaid statutes of 18. *E. 3. 34. Ed. 3. & 17. R. 2.* have ordained, that some learned in the Lawes shall be put into the Commission of the Peace, in every Countie within this Realme.

Also there bee divers Statutes, which by speciall words did ordaine, that the Justices of P. should have authoritie at their generall quarter Sessions to inquire of, heare, & determine certaine felonies; as the Statutes:

18. *H. 6. 19. & 3. H. 8. 5.* Souldiers departing without licence.

1. *Ed. 4. 2.* Felonies presented before Sheriffes in their Turnes, or Law-dayes.

22. *H. 8. 11.* Cutting downe of Powdicke.

25. *H. 8. 6.* Against Buggerie.

8. *El. 3.* Transporting of sheepe.

39. *El. 4. & 1. Jac. 7.* Incorrigible Rogues.

39. *El. 17.* Wandring Souldiers and Mariners.

43. *El. 13.* Carrying men forcibly out of Cumberland, &c.

So that the Justices of Peace, at their Sessions, may safely proceed to trie all pettie Larcenies, and small Felonies, and such other Felonies whereto they are authorized by these last recited statutes: And in such cases also, the Justices of Peace that shall take the examination of such felonies, may safely binde over the informers, and certifie the examinations,

P. Inst. 14.
Sta. 1. 13.
L. 1. 1. 13.
Co. 2. 111.

P. Inst. 14.

P. Sher. 11.

P. Inst. 11.

P. Inst. 11.

P. Inst. 15.

P. Inst. 74.

P. Mar. 6.

P. Rob. 6.

tions and informations, to their next generall Sessions of the Peace.

In cases of murder, or other homicide, the offenders (by the Statute of Glouc. made. 6. E. 1. cap. 9.) are to abide in prison untill the Justices of Gaole deliverie shall come into the Countrey to deliver the Gaole: And by the Statute of 4. E. 3. two (wardens or the keepers of the peace, or) Justices of Peace might take indictments, &c. but the persons so indited were to be delivered by the Justices of Gaole deliverie.

But after by the Statute of 18. E. 3. cap. 2. before mentioned, Justices of Peace were assigned to heare and determine felonies, &c. and to inflict punishment according to Law, and the manner of the deede. And by the Statute of 34. E. 3. cap. 1. Justices of peace had power given them to heare and determine at the Kings suit, all manner of felonies done in the same Countie; according to Law, &c. And by the Statute of 17. R. 2. cap. 10. in every Commission of the peace, two men of Law (amongst others) are to this purpose to be assigned, *sc.* to goe & proceed to the deliverance of Felons, as often as they shall thinke it expedient.

And yet there be some felonies, which the Justices of Peace cannot heare or try at all, neither can they inquire thereof, nor otherwise deale therewith; (as it seemeth) as namely:

1 First, if any man being the Kings sworne servant (and his name in the Chequer-roll of his household) under the degree of a Lord, shall conspire with another to destroy the * Kings Majestie, or any Lord of this Realme, or any other sworne to the Kings Councell, or the Steward, Treasurer, or Comptroller of the Kings house: every of these offences are made felonie by the Statute made 3. H. 7. But such offences are by the same Statute appointed to be tried by a Jury of the Check-rol of the same household, and before the Steward, Treasurer, or Controller of the Kings said house.

2 All murders, or manslaughters committed or done within any the Kings palaces or houses, or within the limits or bounds thereof, or within any other house where his Majestie shall happen to be then abiding in his royall person, shall be enquired of, tried, heard, and determined before the Lord great Maior, or Lord Steward for the time being of the Kings household, & in their absence before the Treasurer and Comptroller of the same household, and the Steward of the Marshalsey, or two of them, &c. and such trial to be by the inquisition and verdict of his Majesties household servants in the Check-roll. 33. H. 8. cap. 12.

3 Embeaselling of any Record, Writ, Returne, Panell, Proceffe, or Warrant of Atturney, in the Chancery, Eschequer, the one Bench or the other, or in the Treasurie, whereby any judgement shal be reversed, every such offence is made felonie in such Imbeasellor, Stealer, or Taker away, and in their procurors, Counsellors, and Abettors, by the Statute of 8. H. 6. But such offences are by the same Statute appointed to be tried by a Jury of twelve men, whereof the one halfe shall be of the men (*sc.* of the Officers and Atturneyes) of the same * Courts, who shall be sworn before the Iudges of the said Courts, *sc.* of the one Bench, or of the other, to enquire of that offence: and if they shall indite the Embeasellors of such record, &c. they shall be arraigned thereupon before

* This is
High Treason.
See p. 11.
H. 7.
C. 14.

2. H. 6. c. 12.
Co. 11. 34.

* 7. Fel. 12.

the same Iudges, as in cases of other felonies.

4 Raising of any such Record is also felonie, within the said Statute of 8.H.6. and to be tried as aforesaid. *Br. Cor. 174.*

5 Forging of any deed or writing sealed, or of any Court Roll, Will, or Acquittance; or to cause or assent to be made any such forged writing; or to publish or shew forth in evidence any such forged writing, knowing the same to be forged; if any person being once lawfully convicted of any of the said offences, shall afterwards commit any the said offences againe, everie such second offence is made felonie by the Statute of 5.Eliz. But by the same Statute, such offences are to be inquired of, heard and determined, by and before Iustices of Oyer and Determiner, and Iustices of Assise. *2.R.3.fo.19. 5.Eliz.c.14.*

And therefore whereas one *R. Smith* was indicted at the Sessions of the Peace in the Countie of Oxford, upon the said Statute of 5.Eliz. for forging of a false deed, it was adjudged by the whole Court in the Kings Bench, *Ann. 30.Eliz.* that the same Indictment was not well taken: For although the Iustices of peace by their Commission have power (of Oyer and determiner) to heare and determine felonies and Trespasses; &c. And have in their said Commission an expresse clause *ad audiendum & Terminandum*, and so are Iustices of Oyer and Terminer, yet it was resolved by the Court, that for as much as there is a Commission of Oyer and Terminer knowen distinctly by that name, and the Commission of the Peace is knowne distinctly by another name, that the said Indictment taken before the Iustices of the Peace at their Sessions, was well taken, and therefore it was quashed. *Co 9.118. Crompt. 138.*

The reason of this last case and judgement, seemeth to hold in the former cases, and in all other like cases, where any Statute doth specially give authoritie to any other distinct Court, or to other Iustices or Commissioners (leaving out the Iustices of P.) to inquire of, heare, and determine, or to try Felons, &c. there the Justice of the P. (at their Sessions) cannot inquire thereof, &c.

6 Servants imbeffelling, or taking away the goods of their deceased Master, the Executors of the partie deceased may have a Writ directed to the Sheriffe to make open Proclamation two Market-dayes, that such offenders shall appeare in the Kings Bench at a certaine day: And if such Writ be returned, that Proclamation is thereupon made accordingly, then if the said persons which should appeare by reason of the said Proclamation; doe make default, and do not appeare in the Kings Bench at the day specified in the said Writ, they shall be attainted of Felonie, by the Statute of 33.H.6. So that such offence of servants imbeffelling their said Masters goods, beginneth first to be felonie upon their default of appearance in the Kings Bench, after Proclamation; of which default the Iustices of Peace cannot take notice, for that they have not before them the record of such default, or not appearing, and therefore the Iustices of P. cannot inquire of such Felonie, &c. *Crompt. 56. Lambt. 529.* *13.H.6.68.*

But in the former cases, if any such offender shall be brought before any Iustice of Peace, and charged with any such Felonie, *quare* how far the Iustice of Peace is to deale, or what he is to doe therein, considering the

the Iustices of Peace are no Iudges of such Felonies, neither have they any iurisdiction given them by the Statutes in such cases : and yet for that they are by their Commission authorized to deale with all felonies, as also with all Offences against the peace of the King, and Realme, of which sort all these last former offences are, *Quere* if the Iustice of Peace shall not doe well to examine the offence, and then to certifie his examination, to such persons as by the Statute are made Iudges of the cause : And also to commit such an offender to prison, to binde over the informers : And to take their information upon oath.

7 Againe, if a man had bene feloniously stricken in one Countie, and after died thereof in another Countie, (by the Common Law) no indictment could be thereof taken in either of the said two Counties, for that the Iurors of the Countie where such partie died (of such stroke) could not take knowledge of the said stroke (being in a forreine Countie :) nor the Iurors of the Countie where the stroke was given, could not take knowledge of the death in another Countie. But now by the Statute of 2. & 3. Ed. 6. an indictment thereof found by Iurors of the Countie where the death shall happen (whether it shall be found before the Coroner, or before Iustices of peace, or other Iustices, &c.) shall be good and effectuell in Law: And that the Iustices of Gaole deliverie, and Oyer & Terminer in the same Countie, where such indictment shall be taken, shall and may proceed upon the same, as if such stroke and death had bene all in one and the same Countie.

Also where a felon had robbed or stollen goods in one Countie, and after convaied their spoile, or goods so stollen, into another Countie, to their adherents there, who knowing of such felonie, received the same goods; in which case, although the principall were after attainted, the Accessarie notwithstanding escaped, by reason that he was Accessarie in another Countie, and that the Iurors of the said other Countie (by the Common Law) could take no knowledge of the principall felonie, in the first Countie : but now by the said Statute of 2. & 3. Ed. 6. it is enacted, That where any murder or felonie shall be committed and done in one Countie, and other persons shall be accessarie (in any manner, to any such murder or felonie) in any other Countie, That an indictment thereof found or taken against such Accessarie, before the Iustices of peace, or other Iustices, &c. in the Countie where such offence of Accessarie shall be committed, shall be good and effectuell in Law: and that the Iustices of Gaole deliverie, or Oyer and Terminer, of or in such Countie where the offence of any such accessarie shall be committed, shall write to the *Custos Rotulorum*, where such principall shall bee attainted or convicted, to certifie them whether such principall be attainted, convicted, or otherwise discharged of such felonie; and thereupon the *Custos Rotulorum* shall make certificate in writing under his seale, to the said Iustices accordingly; and then the Iustices of Gaole deliverie, or Oyer and Terminer, shall proceed upon every such Accessarie, in the Countie where such Accessarie became Accessarie, as if both the principall offence and accessarie, had bene committed and done in the said Countie where the offence of accessarie was committed.

So as by the letter of this last recited Statute, the jurisdiction over these last recited felons, and over such accessaries, is not committed to the Iustices of peace to proceed to the triall of them: But this authority is remitted to the Iustices of Gaole deliverie, or of Oyer and Terminer. Yet the Iustices of peace may examine these offences, and take information against the offenders, & certifie the same to the next generall Gaole deliverie, and may binde over the Informers, and commit the offenders: Also the Iustices of peace may inquire thereof, and take indictments against them, as in other cases of felonie.

8 Lastly, the Iustices of peace (at their Sessions) cannot make triall of such as be indicted of felonie, before Coroners, or before the Iustices of Gaole deliverie, or of Oyer and Terminer, unlessse the same persons (*sc.* Lamb. 33a) the said Coroner, Iustices of Gaole deliverie, or of Oyer and Terminer) were also Iustices of peace in the same County, so as the Indictment may be understood to be taken by them as before Iustices of the peace. For the Commission of the peace, and the authoritie of Iustices of the peace, extendeth onely to trie such as stand indicted before themselves, or before former Iustices of the Peace; or before the Sheriffe in his Tourne, or the Steward in a Leet. See *Lamb. 486. & Stat. 1. Ed 4. cap. 2. & Stamf. 87.* for indictments taken in the Sheriffes Tourne; and for indictments taken in Leets, See *Br. tit. Leet 1* And yet by the booke *8. H. 4. fol. 18.* it seemeth that indictments or presentments of Felonie taken in the Leet, shall be delivered over to the Iustices of Gaole deliverie. *Br. Franch. 5.*

Also in some cases of Treason and misprision of Treason, the Iustices of peace may inquire, and take indictments, but cannot proceed to triall, or to heare and determine the same.

As of maintainers of the authoritie of the Bishop, or See of Rome; And of their procurers, and maintainers, &c. the Iustices of peace in their quarter Sessions may inquire of such offences; But they must certifie everie presentment thereof made before them, into the Kings Bench (within fortie dayes, upon forfeiture of an hundred pounds by every Iustice of peace there present, not making certificate accordingly) *5. Eliz. xap. 1.*

2 So of such as shall obtaine from Rome, &c. any Bulls, or Absolution; Or shall publish or put in ure any such Bull; Or shall give or take Absolution, by colour of any such Bull;

And their procurers, and maintainers, &c.

And the concealers of such Bull, or Absolution offered to them.

3 So of such as shall withdraw any subject, from the Religion now used to the Romish Religion; Or from their obedience to the Kings Majestie; Or to the obedience of the Pope, &c. *33. Eliz. 1.*

And of such as shall be so withdrawne.

And of their procurers, and maintainers, &c.

And of the concealers of such offences.

4 So of such as shall bring into this Realme, any *Agnus Dei*, or other superstitious pictures, or Beads; Or shall deliver, or offer any such to any subject: *13. Eliz. 2. 23. Eliz. 1.*

And of the receivers of such superstitious things.

For

For all these last recited offences against the Stat. 5. Eliz. 1. 13. Eliz. 2. & 23. Eliz. 1. See more fully, *postea tit. High Treason.*

And if any such offender against any of these last mentioned statutes shall be brought before any Iustice of peace, and charged with any such offence, it shall be the Iustices part, to take the examination of such offences, and to binde over the Accusers and (materiall) Informers, to appeare (and to prefer a bill of Indictment, and thereupon to give in Evidence to the Inquirors, against such offenders) at the next quarter Sessions (as it seemeth;) Or rather at the next Assises, or generall Gaole deliverie; Or else in the Kings Bench, whensoever (upon reasonable warning) they shall be thither called; And then to commit the offender to the Gaole; And after to certifie the said examinations, informations, and recognizances (by him taken) to the said Sessions, or Gaole delivery, or into the Kings Bench, &c.

In other cases of High Treason, or Misprision of Treason, what the Iustices of peace out of their Sessions shall do with such offenders brought before them, See *Postea tit. Misprision, cap. 90.*

But now to returne to the businesse of the Iustices of peace out of their Sessions.

If one shall bring a man suspected of felonie before any Iustice of peace, but refuseth to be bound to give evidence against the prisoner, (either at the generall Gaole delivery, or quarter Sessions, as the case shall require) If such bringer hath given evidence before the said Iustice against the prisoner, or can declare any thing materiall to prove the felony; and will not be bound to give evidence upon his triall, the Iustice of peace (upon his discretion) may commit to prison such person so refusing, or may binde him to his good behaviour. But if the bringer of a person suspected of felonie, cannot declare any thing materiall to prove the felonie, nor any other person then present, it seemeth the Justice ought not to commit the prisoner: And so was the direction of Sir *Davia Williams*, at the Assises at Cambridge afore said. Yet the Justices shall do well to examine the prisoner, and if he shall confesse the felonie, then to commit him; Or if upon his examination, there shall appeare any just cause of suspicion; Or if the prisoner be a man of evill fame, and that there be a felonie committed; in these cases, the Justice shall doe well not to let him goe, but at least to binde him over to the next Gaole deliverie, and in the meane time to take further information against him. See the other title, *Felonie, cap. 107.*

Fish. CAP. 21.

West. 1. 47.
11. R. 2. 19.
P. Rich. 1.
P. Rich. 14.

EVERIE Justice of peace is a Conservator of rivers, and of the Statutes made in that behalfe (sc. of the Statute of 13. Ed. 1. cap. 47. 13. R. 2. cap. 19. & 17. R. 2. cap. 9.) within his Countie where he is a Justice, and may appoint and sweare under-conservators; and (when he may attend it) ought to survey all the weares in the rivers, that they be of a reasonable wideness, and all other defaults done against the afore said statutes.

EVERIE

Every Justice of peace, may burne the nets, and other engines, put or cast into waters, wherewith the fric or breed of any fish may be taken or destroyed; And this shall be for the first offence: and for the second offence, the said Justice of peace may (as it seemeth) imprison such offenders for a quarter of a yeare; And for the third offence, one whole yeare: and as the trespassse or offence increaseth, so may the Justice of peace increase the punishment of such offenders. See the Statutes 13.E.1.47. 13.R.2.19. & 17.R.2.9.

By warrant of any one or moe Justices of Peace, the Constables and Church-wardens (where any offence is committed in destroying the spawne and brood of sea-fish, against the Statute made, 3.Iac.Regis) may levie the forfeitures of the offenders by distresse and sale of the offenders goods, rending to the offenders the surplusage. 3-Iac.12.

The particulars of the said Statute 3.Iac.Regis, are as followeth:

1 No person in any haven, harbour, or creeke, or within five miles of the mouth of any haven, harbour, or creeke of the Sea, shall fish with any draw-net, or drag-net, under three inches meash (*viz.* one inch and an halfe from knot to knot) except for taking of Smoulds in Norfolk only; And except for taking of Herring, Pilchards, and Spicots.

2 No person in any haven, harbor, or creeke, or within five miles of the mouth of any haven, &c. shall fish with any net with canvas, or other engine or device, whereby the spawne, fric, or brood of any Sea-fish may be destroyed.

And for every such offence, the offenders shall forfeit their nets, and ten shillings in money; the one halfe thereof to be to the use of the poore of the Towne or Parish where the offence shall be committed, and the other halfe to him that will sue for the same; and to bee levied by the Mayor or other head Officer of every Citie, Borough, or Towne Corporate; or by warrant from one or moe Justices of Peace. *Vt supra.* 1.Iac.12.

Fish-dayes.

Every Justice of Peace, in the Lent time, may enter into, and search 1.Iac.12. p.7. all victualling-houses, And finding there any Beefe, Mutton, Veale, or Hogs killed, or dressed (except flesh to be killed three dayes next before Easter) may take and seise the same as forfeit; And shall give the same to prisoners, and other poore folkes, by their discretion.

Forcible Entrie. CAP. 22.

What is Forcible Entrie, and what is a forcible holding, or detainer, see the other title *Forcible Entrie, hic cap. 77.*

One Justice.

Every Justice of Peace, upon complaint to him made, or upon other notice to him given, of any Forcible Entrie into, or holding, or detainer of possession of, any lands, tenements, or other possessions (or of any benefices or offices of the Church) contrarie to these Statutes, without any examining, questioning, or standing upon the right or title of either partie,

15 R.1.1.
8.H.6.9.
P.2.
Dyer, 310.

partie, ought in convenient time (at the costs of the partie grieved) to doe execution of these Statutes in manner and forme here under following. See *Lamb.* 150.

11.R.3.2.
Lamb. 152.

1 First, he ought to goe to the place where such force shall be. And he may take with him sufficient power of the Countie, or Towne, by his discretion, and the Sheriffe also if need be to aid him, for the better execution of this businesse, *scz.* as well for the arresting of such offenders, as also for the removing of the force, and for the conveying of them to the next Gaole. And whosoever (of that Countie) shall refuse to attend and assist the Justice of Peace herein, shall be imprisoned and make fine to the King, 15.R.2. cap. 2.

2 He ought to arrest and remove all such offenders, as at his comming he shall see, or finde continuing the force; and may take away their weapons, harnesse, and armour, and presently cause them to be preised, and after to be answered to the King as forfeited, or the value thereof. *Vide Libr. Intracit. faux imprisonment, diu. 7.* Arrest.

If the doores be shut, and they within the house shall deny the Justice to enter, it seemes he may breake open the house to remove the force.

But if such offenders being in the house, at the comming of the Justice, shall make no resistance, nor make shew of any force, Then the Justice cannot arrest, or remove them, except upon the enquire after a force be found. See *Cromp.* 73. and the other title, *Forcible Entrie*.

Cromp. 71.

Also if the house or land which is holden with force shall extend into two Counties, and the offenders remove their force into that part of the house or land which is in the other County, when the Justices doe come, they cannot then remove the force.

And if the Justice at his comming shall see or finde a force, and shall remove the offenders, yet hee may not upon this his owne view, restore the partie ousted, to his possession againe, without enquire first made of the force by a Jury, as appeareth hereafter.

14.H.7.2.
Co. 8. 121.

3 Also the Justice ought to make a record of such force by him viewed; which record shall be a sufficient conviction of the offenders; and the parties shall not be allowed to traverse it. Record.

Lamb. 152.
103. & 375.

And this record (being made out of the Sessions by a particular Justice) the said Justice may keepe by him: or hee may make it indented, and certifie the one part into the Kings Bench; or to leave it with the Clerke of the Peace; and the other part he may keepe himselfe.

The forme of the Recorde, see the other title; *Forcible Entrie*, among the Presidents. cap. 129.

21.H.6.1.
Br. Peace. 4.
Co. 8. 120.
24.

4 Also he ought to commit (immediately) to the next Gaole, all such persons, as he shall finde and see continuing the force at his comming to the place; The said offenders there to remaine convict by his owne eye, testimonie, and record, untill they have paid a fine to the King (or given securitie for the payment thereof:) For this sight and view of the force by the Justice (being a Judge of Record) maketh his record thereof (in the judgement of the Law) as strong and effectuell, as if the offenders had confessed the force before him; and (touching the restraining of traverse) more effectuell, than if the force had beene found by a Jury, upon the evidence of others. And

And yet the words of the Statute seeme more large, *sc.* and if he doe finde any that made any such Forcible Entry, or that hold the place with force, &c. hee shall commit the offenders to the Gaole, &c. But such force must be in the presence or view of the Justice of Peace, or else hee can neither record it, nor yet commit the offenders, *13.H.7.Crooke 41.* Crompt. 195.b.

The forme of the *Mittimus*, see the other title, *Forcible Entry, cap. 129.*

Fine. 5 Also the same Justice of Peace, or some of them that shall see the force, (as having best knowledge of the matter, and of the quantitie of the offence, and having the custodie of this Record) are the proper Judges over this offence; and therefore may asseſſe the fine upon everie such offender: but the fine must bee imposed upon every offender severally, and not upon them joyntly; and the Justice ought to estreat the same fine, & to send the estreat into the Elchequer, that from thence the Sheriffe may be commanded to levie the said fine to his Majesties use. But upon the same fine so asseſſed and estreated, it seemeth the Justice is to deliver the offenders; *Lambert, 554.* Co. 3. 41.a.
Lamb. 163.
597.
Co. 11. 43.a

Also upon payment of the said fine to the Justice, or upon Sureties found (by Recognizance) for the payment thereof, the said Justice may deliver the offenders out of prison againe at his pleasure, by some opinions: But *quære* whether the Justice of Peace shall meddle with receiving the fine, for that the Sheriffe is accomprant for all fines, *Lamb. 555.* Lamb. 161.
555.
Br. Imp. 100

Or the Justices of Peace (by some opinions) may record such force, and commit the offenders; and after certifie the record to the Justice of Assise, and Gaole delivery (as it was done at Stafford Assises, *Anno 26. Eliz.* by the report of Master *Crompton*;) or else to certifie it to the generall Sessions of the Peace (as it seemeth to Master *Crompton*) and there the offenders may be fined; for, saith he, the Statute doth not say, that the fine shall be asseſſed by them that record the force, more than by other Justices. Crompt. 161.
Lamb. editio.
1582.

Or rather the Justice of Peace may certifie or deliver the Record by him made (and referre the fine and further proceedings therein,) to the Kings Bench (in regard of their supreme authoritie in such cases.) And this Master *Lambert* thinketh to be the safest course. Lamb. 163.

Enquire. 6 Also the Justice of Peace, notwithstanding his owne view of the force, may & ought in some good Towne or place neere where the force was (at the costs of the party grieved) to inquire by a sufficient Jurie of same Countie, to bee returned by the Sheriffe, as well of those which made such Forcible Entry, as of those which made such forcible detainer. See the Statute *8.H.6.cap.9. & Pl. 86.a.*

And here note, that any one Justice of peace alone out of the Sessions, may make an enquire (being so appointed by the Statute;) whereas otherwise there must be two Justices at the least, to make an enquire, or to hold a Sessions, and one of them of the *Quorum. Br. Peace 14.*

And this enquire ought to be made, whether the offenders be present or gone, at the coming of the Justice of Peace; yea, this enquire the Justice must make, though he goe not to see the place where the force is, for without this enquire, there can be no restitution. See more concerning this enquire in the other title, *Forcible Entry, cap. 80. &c.* Br. Forcible.
27.

Also

Also by the words of the Statute of 8.H.6.cap.9. (*maintenant mesme les Iustices doivent enquirir, &c.*) the Iustices are to make this enquire immediately after the force committed, and complaint made to them by the partie grieved; and yet if they doe make this inquirie at any convenient time after, it sufficeth. *Crompt. 124.*

If the Sheriffe shall not duly execute the Iustices precept directed to him for retorning a Iurie, he shall forfeit 20.li. And the Iustice of Peace may proceed to heare and determine such default of the Sheriffe. See 8.H.6.cap.9. *hic postea.*

The forme of a Precept to the Sheriffe to returne a Iurie, *vide hic cap. 129.*

The forme of the Enquire, Presentment, or Verdict, see *hic cap. 129.*

7 And if upon such enquire, such Forcible Entrie (or forcible holding or detainer) shall be found by the oathes of the Enquirors, then the said Iustice of Peace shall reseise the lands and tenements so entred upon or holden, and thereof put the partie in possession againe, which in such sort was put, or holden out. See the other title of *Forcible Entrie. cap. 81, 82, 83, 84.*

But the putting out, as also the holding out, must of necessity be found, and that by expresse words in the indictment. See as before.

And so note that the Iustice or Iustices of peace, recording onely the force by his or their view, may not put the party put out, into his possession againe; but the Iustice must first make enquire thereof, by twelve men of the Countie (at a speciall Sessions by the said Iustices to be holden) and then the force being found by the said Iurie, the said Iustice (or Iustices) may put the partie so put out, into his former possession.

And this restitution, the Iustice of Peace may make himselfe: or he may make his Warrant to the Sheriffe to doe it: or else hee may certifie such presentment or indictment, taken before him, into the Kings Bench, and so leave the restitution to be awarded out of that Court. See as before, *cap. 82.*

But the Iustices of Assise and Gaole delivery, nor the Iustices of Peace at their generall Sessions, cannot (as it seemeth) make or award Restitution, except the indictment were found before them; but the Iustices of Peace only, or some of them that were present at the enquire, and when the indictment was found, (they only) have power to make restitution; except notwithstanding the Iustices of the Kings Bench, who have a supreme authoritie in all cases of the Crowne.

And therefore if the Record, *sc.* the presentment of such force, shall be delivered by the Iustices of Peace into the Kings Bench: or that the same presentment or indictment shall be removed and certified thither by *Certiorari*, there the Iustices of the Kings Bench may award a Writ of Restitution to the Sheriffe of the same Countie, to restore possession to the partie so expelled.

After it be found by such Enquire, that such Forcible Entrie or detainer is made, the Iustice of Peace may breake open the house by force, to reseise the same, and to put the partie, so put out, in possession againe. And so may the Sheriffe doe, having the Iustices Warrant.

The

The forme of such Warrant from the Iustice of peace to the Sheriffe, to make restitution, see in the other title of *Forcible Entry*, cap. 129.

But the Iustice of Peace may not (in any case) make restitution, without such enquire first had, and such force thereby found: And if the Iustice shall make restitution without enquire, it seemeth to be punishable in the Star-Chamber.

Also this restitution ought to be made to none but to him only that was put out; so that if the father bee put out by force, and dieth (after enquire, and before restitution) his heire shall not have restitution.

To whom restitution shall be made, see the other title, *Forcible Entry*, cap. 83.

Also, such restitution must be made onely where a man is put out, or holden out, &c. of house, or land, and is not to be understood of a Rent, Common, Advowson, or such like. See the other title, *Forcible Entry*, cap. 81.

Also, the Iustice may make restitution, notwithstanding any offer of Traverse; but yet upon Traverse tendred, the safest way (for the Iustice of Peace) seemeth to be; for him to deliver, or certifie the Presentment into the Kings Bench, and so to referre the further proceedings therein to them. See the other title, *Forcible Entry*, cap. 84.

And although these Statutes doe inflict no penaltie upon the Iustices of Peace, if they shall not execute these Statutes; yet if (upon complaint, or other notice to them given of such force) they shall not at least remove the force, record it, and commit the offenders, they are punishable in the Star-Chamber.

In the case of *Drayton Bassett* (in the Countie of Stafford) about Ann. 22. Eliz. certaine Iustices of Peace of that Countie (although they dwelt not neere to the place) where a great Riot was committed, by a Forcible Detainer, were for their default fined in the Star-Chamber, upon the Statute of 17. R. 2. cap. 8. (as Master *Crompton* reporteth) which statute is, that the Sheriffe, and all other the Kings Officers, shall suppress Rioters, which shall assemble themselves in outrageous or great number. See *Crompt. Author. des Courts*, fol. 32.

Although the Iustice of Peace ought to commit to the Gaole, and may fine all such as he shall see continuing their force at his comming to the place; yet upon force found by the enquire onely, and not viewed and seene by the Iustice (although this presentment of the Iurie bee a conviction of the offenders) yet it seemeth the Iustice of peace may neither fine, nor send to the Gaole the said offenders, (by the statute of 8. H. 6. which appointeth the enquire:) for the Iustice hath power by the said statute to make restitution only, as saith M. *Lambert*; 162. yet M. *Crompton* holdeth the contrarie, sc. that the partie indited shall be fined for the force found, although the Statute of 8. H. 6. speaketh not of the fine.

But howsoever, the Iustice of Peace (upon force found by the Enquire) is to remove the offenders that be present, that so he may restore the other; and may binde the offenders to their good behaviour: and if the offenders be gone, yet the Iustice may make his Warrant to take the offenders, and may after send them to the Gaole, untill they have found sureties for their good behaviour.

Note,

Note, that if such Forcible Entrie, or Deteiner shall be made by three persons, or more, then it is also a Riot; and then (if there bee no former enquire thereof made) it seemeth the two next Justices of Peace (upon notice thereof) ought to enquire thereof (as of a Riot) by a Jurie, within one moneth, upon paine to either of them making default to forfeit 100. li.

Crom. 67. b.
H. 6. 9.
P. Just. 69.
Rast. 174. 6.

Also one Justice of Peace may (as it seemeth) heare and determine the defaults of Sheriffes and Bailiffes, in not returning sufficient Jurors (whereof every one shall have lands, &c. to the value of fortie shillings by the year at the least) before him, to enquire of such Forcible Entrie or Deteiner: and the said Justice of Peace may proceed therein as well by Bill, at the suit of the party grieved, for himselfe, as also by inditement onely for the King; and the same Proceffe shall bee made against such persons indited, or sued by Bill in this behalfe, as should bee made against persons indited, or sued by Writ of trespassse with force and armes against the Kings Peace: what the Proceffe in such case is, *vide tit. Proceffe, cap. 132.*

Defaults of
Sheriffes.

And though any one Justice of Peace may proceed in every of these former cases of Forcible Entrie, or Deteiner, as aforesaid, yet if two or more Justices shall joine therein together, it is the better; for, *Plus videtur oculi, quam oculus; & securius expediuntur negotia commissa pluribus.* Co. 4. 46.

H. 6. 9.
Rast. 174. 6.

Also the Maior, Justice, and Justices of Peace, and the Sheriffes and Bailiffes of Cities and Boroughs having Franchise, shall have in the said Cities, Townes, and Boroughs, like authority to remove such Entries, and to enquire of such Entries, or putting, or holding out, and in other Articles aforesaid, rising within the same, as the Justice of Peace and Sheriffes in Counties and Shires have.

Corporate
Townes.

2 Ed. 3. 3.

Also every Justice of Peace, to whom a Writ upon the Statute of Northampton (concerning the removing of a force) shall be delivered, ought to execute the same Writ, *sc.* he ought to remove the force; and to certifie his doings therein into the Chancery.

The Stat. of
Northamp.

And for that the Justice of Peace, to whom this Writ shall be delivered, is herein but a Minister, and is to certifie that which hee shall doe therein, I will here set downe the manner how hee shall proceed to execute this Writ.

First, when the Justice of Peace shall come to the place where the force is supposed, by this Writ, he may cause three Oyes for silence to be made, and then he may make Proclamation in the Kings name to this effect:

2 Ed. 3. 3.

The Kings Majesties Iustice of Peace straightly chargeth, and in his Majesties name commandeth all and every person to keepe silence, whilst his Majesties Writ, &c. be read, and proclamation be thereupon made accordingly.

2. Then may he read, or cause to be read, the Writ, or may declare the effect thereof.

3. Then let three other Oyes be made; and thereupon make Proclamation againe, as followeth.

2 Ed. 3. 3.

His Majesties said Iustice, doth in his Highnesse name, and by vertue of his

G

Majesties

Majesties Writ, straightly charge and command, that no manner of person, of what estate, degree, or condition soever, now being within the house of B. & C. (named in the said Writ) shall go armed, or keep force of armor or weapon, nor do any thing there, or elsewhere, in disturbance of his Majesties peace, or in offence of the Statute made at Northampton, in the second yeare of K. Ed. 3. upon paine of losing his said armour and weapons, and of imprisoning his body at his Majesties pleasure.

God save the King.

4. Then the Justice of Peace may enter, and search whether there be any force of armor or weapon worn or borne, against this Proclamation: otherwise he may enquire thereof by a Jury (for so the Writ it selfe doth warrant him :) and if after Proclamation any such offenders bee found, he ought to imprison the offenders, and to seise to the Kings use, and preise (by the oaths of some present) the armour and weapons so found with them; and the offenders so imprisoned, are to remaine in prison untill that some other commandement be given concerning them from his Majestie, or his Justices. See the Writ, *Fitz. 249.* and the title, *Bailement; postea.*

But if upon the Proclamation made, they doe depart in peaceable manner, then hath the Justice no Warrant by the Writ, to commit them to prison, nor to take away their armour.

But when the Justice hath removed the force (upon this Writ) he may not put the party that was put out, in possession againe; for if he doe, it seemeth both the Justice, and the party also, are punishable in the Star-Chamber: for the Writ doth authorize the Justice only to remove the force, and not to make restitution.

The forme of this Writ upon the Statute of Northampton, you may see in *Fitz. N. B. 249.*

The forme of certificate, or returne, into the Chancery, of this Writ, see in the other title, *Forcible Entrie, cap. 129.*

without
Writ.

Also every Justice of Peace (*ex Officio*, and without any Writ) may doe execution of this Statute of Northampton, and that as well by force of the Commission, as also of the said Statute.

The manner to execute this Statute, by the Justice of Peace (*ex officio*) seemeth to be all one, as before, where he hath a Writ delivered him; saving that when he doth this *ex officio*, and without Writ, hee needeth not to make any Proclamation, nor to send any certifiat into the Chancery; but the Justice may goe to the place where the force is, and (if it be in an house) he may enter, and search, if any force of armour or weapon, be worne or borne against this Statute; and if any such offenders be found, he may commit them to prison, and may seize and preise the Armour and Weapon so found with them; and hee ought to record all that which he shall do in this behalfe, and thereout to send some Estreat into the Eschequer, that the King may be answered of the armour, or of the value thereof.

But here againe the Justice must not make any restitution of the possession to the party ousted, but must only remove the force.

And concerning the offenders so found, and committed by the said Justice

Crompt. 74
162.

2. B. 1. 3.
P. Armour.

Lambe. 176.

Comp. 163.
Lamb. 175.
334.

Justice of Peace, it seemeth the Justice (at his discretion) may fine them, and upon payment thereof, or upon sureties found for the same, that the said Justice may deliver the offenders, even as in the former Statutes of 15. R. 2. & 8. H. 6. Or else the said Justice may record such force, and commit the offenders, and after certifie the Record into the Kings Bench, or to the Justices of Gaole delivery, or to the generall Sessions of the Peace, as here in this title a little before.

Games unlawfull. CAP. 23.

1. Caroli 1.

THere shall bee no meeting of people out of their owne Parishes on the Lords day (or Sunday) for any sport or pastimes whatsoever: nor any Beare-baiting, Bull-baiting, Enterludes, common Playes, or other unlawfull exercises of pastimes, used by any within their own Parishes, upon paine that every person offending in any the premises, do forfeit for every offence three shillings foure pence, to be employed to the use of the poore of the same Parish where the offence shall be committed. And any one Justice of Peace of the County (or the chiefe Officer of any City, Borough, or Town corporate) upon his or their view, or confession of the party, or prooffe of any one witnesse by oath, shall give warrant under his hand and seale, to the Constables or Church-wardens of the Parish where the offence shall be committed, to levy the said penalty by distresse, and sale of the offenders goods (rendring them the overplus:) and in default of distresse, the offenders to be set in the Stocks by the space of three houres. Provided that none be impeached by this Act, except he be called in question within one moneth next after the said offence committed, 1. *Caroli Regis, cap. 1.* & 3. *Caroli cap. 4.*

King *James* of happy memory, *Anno Domini* 1618. publicly declared to his subjects, these recreations or exercises here under mentioned to be lawfull, that is to say, Dauncing of men or women, Archery, Leaping, Vaulting, May games, Whitson Ales, Morisdances, and setting up Maypoles, and other sports therewith used. And commanded that no such honest mirth or recreatiō should be forbidden to his Subjects upon the Sunday or holy dayes after divine service (*sc.* Evening prayer) ended: Restraining and barring notwithstanding from this liberty all Recusants, and all such as absent themselves from Church upon those daies: Commanding each Parish by it selfe to use these Recreations, and only after Evening prayer ended. And prohibiting all unlawfull games to be used upon Sunday, as Beare-baiting, Bull-baiting, Enterludes, and bowling by the meaner sort.

All which our now gracious Sovereigne King *Charles*, by publike declaration, *Anno Domini* 1633. hath confirmed, allowing further the feasts of the dedication of Churches, commonly called Wakes, and all manlike Exercises to be there used with all freedome, yet so as none bring any weapons thither. Commanding all Justices of Peace to looke that no disorders be at such Wakes, but to be prevented or punished, &c.

Every Justice of Peace may from time to time (as well within Liberties, as without) enter into any common house or place, where any play-^{33.H.8.9. P.108.64. Player 5.} ing at Dice, Tables, Cards, Bowles, Coyts, Cailes, Logats, Shove-groat, Tennis, casting the stone, * Foot-ball, or other unlawfull game, now in-^{* 12.R.1.2.6. Lamb. 196.} vented, or hereafter to be invented, shall be suspected to bee used; and may arrest the keepers of such places, and imprison them, till they finde sureties by Recognizance, no longer to occupy any such house, play, game, alley, or place.

Also he may arrest and imprison (without bail) the players, till they be bound by themselves, or with sureties, by Recognizance to the Kings use, no more to play at, or haunt to any of the said places, or games, *ibid.*

The said Statute of 33. H. 8. prohibiteth all manner of persons, to play (at any unlawfull game) in any common house, alley, or place; except the keeper of such house, or place, have a Placard, containing what games shall there be used, as also what persons shall play thereat; and then such persons may play there, &c.

Also the said Statute prohibiteth all Artificers, Husbandmen, Labourers, Mariners, Fishermen, and Watermen, and all Apprentices and Servants whatsoever, to play at any unlawfull game, in any place, or at any time, except in Christmas time only, and in their houses; or servants in their Masters houses, and by their Masters licence; Or Serving men within the precinct of their Masters house, Garden, or Orchard, and by their Masters licence. Also no manner of person shall at any time play at any Bowles, in any open places, out of his Garden or Orchard. P. 4.

Every Justice of Peace finding or knowing any person to exercise or use any of the aforementioned unlawfull games (contrary to this Statute of 33. H. 8. cap. 9.) may commit him to ward, there to remaine without baile, untill he become bound (in such summe of money as the said Justice shall thinke reasonable in his discretion) that hee shall not from henceforth use such unlawfull games; *ibid.*

Although these games aforementioned, are by Statute prohibited, as unlawfull for some places, persons, and times, yet are they not unlawfull or evill of themselves, but are matters of recreation and pleasure (though some of them more vaine & more idle then others) and the King by his Prerogative, may tolerate and licence the moderate use of all such games, as it shall seeme good to his Majesty, Co. 1. 85. 6.

Note also, that playing at Cards, Dice, and the like, are not prohibited by the Common Lawes of this Realme (except that one be deceived by false Dice, or false Cards, and then he that is deceived may have his Action of the case for such deceit :) neither are they *malum in se*, or of their owne natures, for then none might be tolerated or licenced to use them; whereas the Statute doth except and tolerate certaine persons, places, and times. And yet good Divines doe hold divers of these Recreations to be altogether unlawfull, as being actions wherein wee neither blesse God, nor looke to receive a blessing from God; nay, such as we dare not pray to God for a blessing on them, nor on our selves in the use thereof. But especially on the Sabbath day, all such Recreations and Games are holden unlawfull; for if lawfull workes be forbidden on that day,

day, much more unlawfull sports (yea, such sports and games, which otherwise, and at other times are lawfull.) See *Ejay* 58. 13.

Gunnies. CAP. 24.

WHosoever shall shoot in, carie, keep, use, or have in his house or elsewhere, any Gunnes, Crossebowes, (* Dags, Pistols, or Stonebowes) contrary to the Statute of 33. H. 8. 6. Every person seeing, or knowing this, may arrest or attach the offenders, and bring or convey them to the next Iustice of Peace in the same County (where they were found offending) which Iustice upon due examination and prooffe thereof before him had, or made, by his discretion, may commit the offenders to the Gaole, there to remaine untill they have paid the penaltie of the Statute, *sc.* x. li.

The effect and particulars of which Statute, be as followeth :

1. No person may shoot in, or keepe, any Gunne, Dagge, Pistoll, Crossebow or Stonebow, except he hath *per annum* 100. li. in lands, tenements, fees, annuities, or offices.

2. No person may shoot in, cary, keepe, use, or have any hand-gun under one whole yard in length, nor any other Gun (* Dag, or Pistoll) that shall be under three quarters of a yard in length.

Every person having in land, &c. 100. li. *per annum*, may seise and take from the offender, every Gun, (Dag, and Pistoll) shorter then is before limited, and every Crossebow (or Stonebow), from him that hath not 100. li. *per annum* : and may keepe such Bow, but must breake such Guns within twentie dayes next after such seisure.

But now by the Statute made 3. *Jacobi Regis cap.* 13. if any person, not having lands, &c. of the yeerely value of forty pounds, or not worth in goods two hundred pounds, shall use any Gun, Bow, or Crossebow, to kill any Deere or Conies, or shall keepe any Buckstall or Engine, Hayes, Gate nets, Purse-nets, Ferrets, or Coney-dogs, (except such person shall have any ground inclosed, used for the keeping of Deere, or Conies, &c. or be Keepers, or Warriners) any person having in lands an hundred pounds by the yeare, in fee, or for life, may take from such malefactors, and to his owne use for ever keepe, such Guns, Bowes, Crossebowes, Buckstalls, or Engine, Hayes, Gate-nets, Purse-nets, Ferrets, and Coney-dogs.

3. No person may cary in his journey, any Gun (Dag or Pistoll) charged, or Bow bent (but onely in time and service of war, or in going to or from musters) except he hath *per annum* 100. li. in lands, &c.

4. No person may shoot in any Gun, &c. within any Citie, Borough, or Markettown; nor within one quarter of a mile of any City, Borough, or Market-towne, except for the defence of his person, or house; or at a butt or banke of earth, and in a place convenient.

5. The Master may not command his servant to shoot in any Gun, or Crossebow, &c. except at butt or banke of earth, or in time of war.

Except notwithstanding out of this Statute, shooting at butt or bank

of earth, by Serving-men (whose Masters are enabled by Statute) and by inhabitants of Cities, Boroughs, and Market-townes; except also all Lords, Knights, Esquires, and Gentlemen, and the inhabitants of every City, Borough, and Market-towne, as also all persons dwelling alone, or neare the Sea, and makers and sellers of Guns, &c. these may keepe Guns, &c. of the length aforesaid, in their houses (yet onely to use, and shoot therein, at a butt, or banke of earth :) and persons having lawfull Placards, they may shoot according to such Placard or Licence. See other exceptions there.

But for as much as in these former cases the Iustice of Peace hath the whole matter committed to himselfe, and that such offenders remaine convict upon his examination, and prooffe of witnesse made before him, therefore he ought to be circumspect in his examination, as also in his *Mittimus*: and further, to make a Record of the matter, (in writing under his hand) and also to send the Estreat of it into the Eschequer, where- Lambt. 295

The forme of such *Mittimus*, *vide hic cap. 126.*

The forme of the Record, see there also.

All persons which shoot in Guns (whether they bee authorized to shoot, or otherwise) ought to present their names to the next Iustice of Peace, and such Iustice shall cause the Clerke of the Peace to record or register their names: but *quere* if this be now in use, 2.E.6.14.
P.11. *Lambt. 296.*

Two Justices.

Any two Iustices of Peace may commit to the Goal for three months, 1 Jac. 17.
P. Felony, 6 &c. every such person as shall shoot with any Gun, or Bow, at any Partridge, Fesant, house-Dove, Mallard, or such Fowle, or at any Hare. See more in the title *Partridges*.

But note that the Sheriffe, or any of his Officers, for the better executing of their office, may cary with them hand-guns, dags, or other weapons, (invasive or defensive) notwithstanding the Statute of 33.H.8.cap.6.Co.5.fol.72.

Hawking. CAP. 25.

Every Iustice of Peace may examine the offences, for Hawking or P. Felony, 6
P. Iust. 16 hunting with Spaniels in eared or codded corne, and may binde the offenders with good Sureties to appeare at the next generall Sessions of the Peace, to answer their said offences, 23.Eliz.10. It seemeth requisite also that the Iustice doe binde over the witnesses, which shall discover the offence.

Against Hawking at Fesant or Partridge between the first day of Iuly, and last of August: See 7.Iac. 11. *hic titulo Partridges.*

Hawks that be found shall be delivered to the Sheriffe, *vide titul. Felonies by Statute.*

Hawkes, where the taking, or concealing them, is Felony: See there also.

High-ways.

Highways. CAP. 26.

Co.L. 56. **N**Ote that there are three kinde of wayes. *sc.*

1. A Foot-way, called *Iter, quod est ius eundi vel ambulandi hominis.*

2. A Foot-way and Horfe-way, called *Actus ab agendo*, and this vulgarly is called a Packe or Drift-way, and is both a Foot-way and Horfe-way.

3. The third a Cart-way, &c. called *Via*, or *Aditus* (and containeth the other two, and also a Cart-way) for this is *Ius eundi, vehendi, & vehiculum & jumentum ducendi*: And this is two-fold.

Viz. *Via Regia*, the Kings high-way for all men: with this onely the Justices of Peace are here to meddle.
Communis Strata, belonging to a City or Towne, or betweene neighbours.

13. E. 1. 5.
 P. 18.
 See posses sit
 Robur.

Every Justice of Peace may cause the high-ways to Markets to bee enlarged, and cleansed of bushes and trees (so that there be neither bush, wood, nor tree, within two hundred foot of either side of the way: the Stat. 13. E. 1. excepteth *Ashes*, and great trees, but by the Statute 5. E. 1. all trees therein are to be cut downe) &c. And this the Iustice of Peace may doe by force of the Commission, the first *Assignavimus*, (Lamb. 190.) but how the Iustice shall compell the same to bee done, I see not otherwise then by admonition, and if that be not obeyed, then to present it, or cause it to be presented at the quarter Sessions, &c. *Vide tit. Commission of the Peace.*

One Justice.

Also by the Articles of Inquisition upon the statute of Winchester, (made about 24. E. 1.) It is appointed that if these high-ways be not enlarged accordingly, enquire shall bee made where the wayes bee, who ought to enlarge them, and of such as doe hinder such enlargements, as well in Parks, as in other Woods See *Poultons Statutes at large, fol. 93.*

5 Eliz. 13.
 P. 18. 49.
 Comp. 131.

Every Iustice of Peace (upon his owne knowledge) may present in open generall Sessions, any High-way not sufficiently repaired, and amended, within the County and limits of his Commission.

5 Eliz. 13.
 Comp. 131.

Every Iustice of Peace (upon his owne knowledge) may present in open generall Sessions, any other default or offence committed (within the County and limits of his Commission) contrary to the Statutes of 2. & 3. P. & M. 8. & 5. *Eliz. cap. 13.* concerning the amendment of High-ways: and every such presentment shall bee of the force of a presentment of twelve men (*sc.* shall be a good Indictment against the offenders.) So that upon such presentment, the Iustices at the said Sessions may assesse the fine upon such offenders, and that in the absence of the party, and without calling them to it by any Proccesse (saving to every offender their lawfull Traverse.) *Ibidem.*

1. & 3. P. & M. cap. 8.
 5. Eliz. 13.
 29. Eliz. 5.
 P. 1.

So that every Iustice of Peace may present, as aforesaid, all and every these defaults following, being all contrary to the said statutes, &c.

1. IF the Constables and Churchwardens of every Parish yeerely upon the Tuesday, or Wednesday in Easter weeke, doe not call together

ther the Parishioners, and doe not then also chuse Surveyors, for the amending of High-wayes in their Parish leading to Market-townes, according to the statutes, 2. P. & M.

2. If six dayes be not by the Constables, and Church-wardens then also appointed for that purpose, and to be before Midsummer following, 2. P. & M. & 5. Eliz. P. 2.

3. If notice of the said daies be not given the Sunday after Easter openly in the Church, by the Constables and Church-wardens. 2. P. & M.

4. If every person having in his occupation, a Plowland in Tillage or Pasture in the same Parish; or keeping there a Plow, or a Draught, doe not send at every day and place appointed, &c. for every Draught, or Plow-land in Tillage or pasture, one Cart furnished with necessary tools, and two able men with the same: and that they doe such works as they shall be appointed (by the Surveyors) by the space of eight houres, every of the said six dayes. P. 2, 4.
Nall. 159.
Lamb. 159.
2. P. & M.

But by the statute 18. Eliz. 9. hee that shall occupie a Plow-land in tillage or pasture, lying in severall Parishes, shall be chargeable only in the Parish where he dwelleth: and hee that occupieth severall Plow-lands as aforesaid, in severall Parishes, shall bee charged in each Towne or Parish where such land lieth; *sc.* to finde in each Towne or Parish, one Cart furnished as aforesaid. P. 13, 14.

5. If any of the cariages shall not be thought needfull by the Surveyors upon any the said dayes, if then everie such person shall not send two able men for every Cart of theirs so spared, 2. P. & M. P. 3.

* 6. If every other Housholder, Cottager, or Labourer (able to labour, and being no hired servant by the yeere) doe not by himselfe, or one sufficient Labourer, worke every of the said six dayes by the space of eight houres, as they shall be appointed by the Surveyors, 2. P. & M. P. 4.

A Cottager, one describeth to be, *Casa rustica ex leviori materia excitata, arundine aut ulva palustri tecta. Minsh.*

And he is a Cottager that dwelleth in such Cottage or house, without land belonging to it. 4. E. 1. Stat. 1.

7. Note that all persons being chargeable but as Cottagers, yet if they be in the Subsidie v. li. in goods, or xl. s. in lands, or above; they shall finde two able men to worke every of the said sixe dayes (by the Stat. 18. El. cap. 9) But it seemeth the Iustice cannot present such default upon his owne knowledge. P. 12.

8. If all fences, hedges, and ditches, next adjoyning on either side any High way, be not from time to time diked, scoured, repaired, and kept low by the owners of the ground. 5. El. & 18. El. 9. P. 7.

9. If all trees and bushes growing in the High-wayes, bee not cut downe by the owners. 5. El.

Note, that the Kings High-way (or *Regia via*) leading either to the Market, or from Towne to Towne, the Freehold, and soile thereof, and the interest of all the trees, and other such profits thereupon growing, doe belong to the Lord of the soile, or the Lord of the Mannor, 17. Ed. 3. fol. 43. & 8. E. 4. fol. 9. Br. *Chemin.* 10, 11, & 27. H. 6. fol. 9. Br. *Leet.* 3. And therefore such Lords are chargeable to cut down the trees and bushes

shes growing in such High-ways: and yet by the opinion of *Keble*, 8. H. 7. fol. 5. the Free-hold of the High-way, and the trees thereupon growing, are belonging to him (sc. to any Free-holder) that hath the land next adjoyning, *Br. Nufance* 28. but it seemeth this must be understood of common Field-ways, or other private ways, and not of the Kings High-way. See 2. Ed. 4. fol. 9. & *Britton* fol. 111.

Note also, that he which hath land adjoyning next to the Kings High-way, by the Common Law (before these Statutes) was and is chargeable and bound of common right, to cleanse and scoure the ditches adjoyning to the said way (sc. betweene his land, and the High-way.) 8. H. 7. fol. 5. d. *Br. Nufans* 28.

At Lent Assises at Cambridge, Anno 1622. Sir *James Ley* delivered it in his charge, that if any person hath made, or shall make, any inclosure next the Kings High-way, that such person shall bee charged to amend the High-way adjoyning to his said inclosure. And if one man hath inclosed on the one side or part; and another man of the other side, they shall be both charged to amend the same way.

Otherwise, High-ways must be sufficiently amended at the Charge of the whole Towne; And it is not enough for the Inhabitants to doe their full six dayes worke yeerely, except their wayes be all well and sufficiently repaired; For if all their said wayes be not sufficiently amended, the whole Towne may be indicted therefore.

Because every towne regularly is to maintaine and amend the High-ways within their owne Parish; except it can be proved to have beene usually amended by any other person, or towne, or by the Hundred, or County, &c. And therefore if sixe dayes workes in the yeere will not serve to amend them, the Surveyors may, yea must appoint moe dayes, &c.

Also concerning the Causey (neere Cambridge) called Doctor *Harveyes* Causey, towards the repaire whereof Doctor *Harvey* hath given eight pounds *per annum* (payable by the Master and Fellowes of Trinity Hall in Cambridge) Sir *James Ley* said, that if this 8. li. *per annum*, were not sufficient to repaire the said Causey, that then the Townes adjoyning, within which that Causey or way doth lye, ought to helpe to repaire the same.

It is called the Kings High-way, for that the King at all times, hath therein passage for himselfe and all his people; and may punish all Nufances therein; though otherwise the interest thereof be in the Lord, to take all the trees and such other profits there growing, and to bring his action for digging therein, or for any other like trespassse there done.

And the King (by the Common Law) may award his Commission for the amending of the High-ways and Bridges thorowout his Realm, so as his people may have safe passage thereby.

10. If any chosen to bee Surveyor, shall refuse the office, or will not take upon him the execution thereof, 2. P. & M. every Justice of Peace may present this as aforesaid.

11. So if the Surveyors shall not within one moneth after any of the former offences committed, present every such offence to the next Justice of Peace. 5. El.

12. Also

12. Also if the Bailiffe, or high Constable (who hath received an Estreat for the levying of any forfeiture upon these Statutes) shall not levie the same; or shall not (betweene the first day of March and last of April, yeerely) make a true account, and payments of all such summes as he hath levied, to the Constables & Church-wardens of every Parish wherein the offence was committed; or if the Constables and Church-wardens have not imployed the same upon their Highwayes: it seemeth every Justice of Peace may (upon their owne knowledge) present every of these defaults, as aforesaid. P. 10.
Raff. 199.
2 P. 34.

And if the Surveyors shall present any of the former offences (by them to be presented) to the next Justice of Peace, within one moneth next after the offence committed; the same Justice ought to certifie such presentment, at the next generall Sessions, *sub pana*, v. li. But if the Surveyors doe not make their presentment to the Justice till after the moneth, and the Justice certifieth it, this seemeth not good against the offenders. P. 3.

The Surveyors authority.

Every such Surveyor (for the better amendment of the wayes within the Parish) may by their discretion take and cary away the rubbish, or smallest broken stones of any Quarry within their Parish, &c. such rubbish as they shall finde there ready digged, by the owners of the said Quarry, or otherwise by their licence. 5 Eliz. 19.
P. 5.

Every such Surveyor may also (for the use aforesaid) dig for, and take, or cause to be digged for, and taken (in the severall grounds of any person within that Parish, neere adjoyning to the way to be amended) any gravell or sand; so as they dig in no mans garden, orchard, or meddow, and but one onely pit, and not above ten yards over at the most, and the same within one moneth to be filled up againe with earth, at the charge of the Parish. Ibid.

Every such Surveyor may likewise cause stones to be gathered up on any mans ground within the Parish, and the same to carie away for the use aforesaid. Ibid.

Every such Surveyor may cause any water-courfe, or spring of water (being in the High-way within their Parish) to be turned into another mans severall ditch (or ground) next adjoyning to the said way, in such manner as by the discretion of the said Surveyor shall bee thought meet. P. 4.

Two Justices.

Also any two Justices of peace (the one being of the *Quorum*) upon complaint to them made by the Churchwardens of any parish, may convent before them, the Bailiffe and high Constables (to whom the Clerk of the peace, or Steward of any Leet hath delivered any Estreats for the collecting of the fines, forfeitures, and americiaments for the defaults aforesaid) and may take their accounts; and may compell them to pay all such arerages, as they shall adjudge, to the Constables and Churchwardens of the parish where the offence was committed; or may imprison them untill they have payed such arerages. P. 11.
2 P. 34.

Every Bailiffe and high Constable upon their said accounts shall have allowed for every pound hee shall collect and pay, 8. d. for his owne paines, and 12. d. for the fee for the Estreat delivered him. P. 12.

Also it seemeth any two such Justices of peace upon complaint to them

Ibid.

them made by the succeeding Church-wardens, or Constables, may convent before them the precedent Constables and Church-wardens, and may take their accounts, and may compell them (as aforesaid) to pay all arerages in their hands, 2. P. & M. 8.

2. P. & M.

Note that all such fines or forfeitures arising in the Sessions, shall bee levied by Estreats indented, made by the Clerk of the peace; who shall seale and signe such Estreats, and shall deliver the one part thereof so sealed and signed, to the Bailiffe or high Constable of the same Hundred; and the other part thereof to the Constables or Church-wardens of the parish where such default was made; and to be delivered by the Clerke of the peace within fixe weekes after Michaelmas yeerely: the which Estreats shall be a sufficient warrant to the said Bailiffe or high Constable, to levie such fines and forfeitures by distresse; and all such fines and forfeitures shall bee bestowed by the Church-wardens on the High-ways in the same parish.

2. 17.

Also, two Iustices of peace (by the Statute 18. *El.*) may take the account of the Surveyors of the wayes, and of the pettie Constables and Church-wardens, for all such forfeitures (within that Statute) as they have levied. 18. *El. cap.* 10.

Here I thought good to move some doubts that have arose upon the former Statutes, and desire that some resolution may hereafter bee given, for better satisfaction, for that they be so ordinarily questioned.

Co. 9. 114.
Co. L. 69.

What, and how much a plow-land is, Sir. *Ed. Coke* in his ninth part, in *Loves* case and upon *Littleton*, telleth us, and saith, That a Carve, or Hyde of land (or a plow-land) which is all one; is not of any certaine content, but so much as one plow may plow in one yeer; and so in some Countrey it is more, and some other it is lesse (according to the heaviness of their soile) and herewith agreeth M. *Lambard*, verbo *Hyde*. A Plow-land.

35. H. 6.

And of the same opinion was Iudge *Prifot* 35. H. 6. 29. where he saith, that a Carve of land is greater in one Countrey, then in another, for that a plow may plow more land in the yeere in some Countrey then in another.

And yet some others do make a difference between an Hyde of land, and a Carve, or plow-land: for they say, that an Hyde of land doth containe foure Plow lands, *sc.* 480. Acres; whereas a Carve, or plow-land containeth but sixscore Acres: and every plow-land or Carve, is foure yard land (in Latine called *Quatronaterra*) every yard land, containing 30. Acres. But a plow-land, or Carve of land, is called in Latine, *Carucata terra*, that is, *quantum aratrum arare potest in aestivo tempore*: for which see M. *Skene*, *Minsb.* and the Surveyors Dialogue made by *Iohn Norden*, pag. 59. And so this definition or description of *Carucata terra*, sheweth that it is not of any certaine content.

Co. 4. 37b
2. p. 124.

Also a Carve of land (or a Plow-land) may containe house, meadow, pasture, and wood. Co. L. 69.

1. Now a man with one Plow and five or six horses will occupy, plow, and dresse 7. or 8. score Acres of arable land yeerely, (as many doe with us in the East parts of Cambridgehire,) and will in Summer goe usually with two draughts or carts; yet such person is usually charged to the amending

amending of the High-ways, but with one Cart furnished. And another man dwelling in the same Towne, and occupieth but 40. or 50. Acres, or not so much, and keepeth but three horses, and one draught or cart, and he likewise is usually charged, as the former, with one cart furnished; whether should their two charge for cariages for the High-ways be all alike? For mine owne opinion, I think it both reasonable, and warranted by the words of the Statute, that he that for his own private businesse, shall usually make and set up two draughts or carts, shall also for the King and Countreys services, bee chargeable with two draughts or carts, though he occupy all his land but with one Plow.

2. Againe, what a Draught for carriage shall bee, *sc.* with how many horses? and whether he that keepeth but two horses and a cart, (as many with us doe) be chargeable or no? I find that a draught for the Kings cariages heretofore, hath beene sometimes with two horses, as it seemeth by the Statute of *Mag. Charta, cap. 21.* (the words of the Statute be, No Sheriffe, &c. shall take the horses or carts of any person, for carriage, except he pay for one cart with two horses, x. d. by the day, and for a cart with three horses, xiiii. d. by the day :) and therefore I should thinke him that usually goeth to cart (for his owne businesse) with two horses, to be chargeable to finde a cart and two horses for the amending of the High-ways, and to carie such loads as his two horses are well able to draw.

3. Againe, if one occupieth a Plow-land in pasture, *viz.* six or eight score Acres or more, of pasture for feeding of cattell, but keepeth neither Cart nor Plough, how shall he be charged to finde a cart or draught that keepeth none; and yet the words of the Statute, 2. & 3. *Phil. & M. & 18. Eliz. 9.* doe expressely charge him, See *hic antea* the words of these two Statutes.

4. Againe, he that shall keepe a Draught for carriage, or a Plough, though he occupieth little or no land, or pasture in his owne hands, but onely carteth or plougheth for other men, whether hee is not chargeable to finde a cart for the amending of the High-ways? It seemeth he is: But *quare* whether he be chargeable to finde two able men with his cart, * except he hath in his occupation a Plow-land: perhaps also hee keepeth never a man.

¶ There be also certaine particular Statutes concerning
High-ways, as followeth.

One Justice. **T**He Occupier of any Iron-workes, for every three loads of cole, or Mine, and also for every tun of Iron that he shall cause to bee caryed in the Winter-time, by the space of one mile, in the High-ways within the Weilds of Suffex, Surry, or Kent, shall pay to the Justice of Peace dwelling neere to the places in that Countie, where the High-ways shall bee most annoyed, or to his Assignes, 3. s. in money; the same (in default of payment) to be levied by distresse, by such Justice, or his Assignee, of the goods of the party in the said Countie. 31. El. 19.
P. 19.

Also such Occupier, for every 30. loads of cole and mine, and for every ten tuns of Iron caryed in the said High-ways, &c. shall lay one load
of

of synder, gravell, stone, or chalke, in places to be appointed by such Justice, or else within eight dayes after demand, shall pay iii. s. for every such load, to the hands of such Justice, who upon default of payment, shall levie the same by distresse, &c.

P. 22. The said Iustice of Peace shall bestow all such summes of money upon the amending the same High-ways, at his discretion.

29 El. 19.
P. 32. Two Iustices of Peace (whereof one to be of the *Quorum*) which Two Justices. were present at the Sessions, wherein any person was convicted for any offence against the Statute of 39. El. may make Warrant for levying the forfeits thereof, to any Constable or other Officer: and they may also appoint such wayes and meanes as they shall thinke meet, to levy the double summes for not paying those forfeits within xx. dayes next after lawfull demand of the same by such officer.

24 H. 8. c. 6.
c. 11. 8. c. 7. By the assent of two Iustices of the Peace, and twelve discreet men of the Hundred and Hundreds adjoyning, any person may make and lay out, in & over his owne land in Fee simple, in the Weild of Kent, as also in the County of Suffex, a new High-way more commodious then the old; and instead thereof may retaine the ground of the old way in severalty to him and his heires: and the same Iustices and twelve men, shall within three moneths certifie under their seales, such new way into the Chancery, *sc.* the length and bredth of the same new way, and other things adjoyning or concerning the same, according to their discretion.

See more of High-wayes, *tit. Bridges.*

Horse. CAP. 27.

* Lamb: 105.
See the Stat. Every Iustice of Peace (after sale made in open Faire or Market, of any stollen horse, &c.) at any time within six moneths next after the said * sale, (or rather next after the felonie done) may take and heare the claime, and proove of the right owner, (from whom the same was stollen, or of his Executors or Administrators, or other person by their appointment) which proove must bee by two sufficient witnesses upon oath, to be made within forty dayes next insuing such claime. *31. Eliz. cap. 12.*

21 Faict: 8.
31. H. 12. Also the same Iustice of Peace may minister an oath to the party that bought the said horse, or that hath the possession and interest of the same horse, what money he paid for the same *bona fide*, so as the right owner repaying the same, may have his said horse againe, *ibid.*

Note that in every Faire or Market, where any Horses, Geldings, Mares, or Colts, are to be sold, there ought yeerely to be appointed out one certaine and speciall open place where the said horses, &c. shall bee sold: And one sufficient person (or moe) to take toll, who shall continue in the said place, from the houre of ten before Noone, untill Sun-setting, every day of the aforesaid Faire. *2. & 3. P. & M. cap. 7.*

2. & 3. P.
& Mar. 7.
31. El. 12.
P. 5. & 7. Also note, that every sale, or other putting away, in any Faire or Market, of any stollen horse &c. not being according to the Statute in every point (*sc.* in every of these particulars following, as it seemeth) is void,

to alter or take away the property of the owner, from whom such horse was stollen. *sc.*

1. If the horse be not, in the time of the said Faire or Market between ten of the Clock and Sun-setting, one houre together (at the least) in the open place of the Faire, &c. where horses are commonly sold, *2. P. & M.* the sale is void, &c.

2. If all the parties to the bargain (being in the Faire) shall not come together with the horse, to the Book-keeper, to the open place appointed, *2. P. & M.* the sale is void, &c.

3. If the Book-keeper, Toll-taker, Bailiffe, or other chiefe Officer of the same Faire or Market, shall not take perfect knowledge of the seller, or of the voucher, *scilicet*, of their true Christian name, syr-name, mystery, and place of dwelling: Or shall not enter all the same into his Booke, the sale is void, &c. *31. Eliz.*

4. If the voucher be not a sufficient and credible person: Or if the voucher shall not know the seller indeed, or shall not truly declare to the Book-keeper, &c. the Christian name, syr-name, mysterie, and place of dwelling, as well of himselfe, as of the seller (as it seemeth) the sale is void, &c. *31. Eliz.*

5. If the Book-keeper, &c. shall not make entrie into his booke, of the true price, that the horse is so sold, with the colour and one speciall marke at the least, of the same Horse, &c. *2. P. & M. & 31. El.* the sale is void, &c.

6. So if a true and perfect note in writing, of the name of the seller, or voucher, and of their dwelling, &c. and of the price, bee not given to the buyer, by the Book-keeper, &c. and subscribed with his hand. *31. Eliz.*

7. And lastly, if toll be not paid where toll is due; or the Book-keeper not paid for the entry, &c. *Vide 12. E. 4. fol. 8. Cromp. 91. Fi. 45.* *2. P. & M.*

If the theefe which stealeth an horse, shall sell the same horse in Market overt, or Faire by a false name, and that bee so entred into the Toll-booke; such misnaming of the seller, maketh the sale void against the right owner of the horse. And this was the opinion of *Windham* and *Roads* Just. (upon this Stat. *2. & 3. P. & M.*) *Anno 30. El.* in a case betwene *Gibs* Plaintiffe, against *Bastell*; the case being thus: One *Potter* did steale the horse of the Plaintiffe, and sold him to the Defendant in Market overt, by the name of *Lyster*, and so it was entred into the Toll-booke, that *Lyster* sold the horse, whereas his name was *Potter*; whereupon *Gibs* the Plaintiffe brought his Action of the case *Sur trover*, against the Defendant *Bastell*, &c.

Note also, that every contract for any stollen horse, &c. made out of open Faires, is void, though they be after booked, *Dyer 99.*

Also, a sale in a Faire or Market overt, shall not take away the owners property, where the buyer doth know that the property was to another man, or where the buyer knoweth that the horse, or other goods, were stollen. See *postea tit. Restitution, cap. 3.* *Co. 3. 71. B. 7. H. 7. 12.*

Also to alter the property of a stranger having right, horses and all other goods, are to be sold in such a place or shop, as is commonly used for the selling of goods of the same kinde, or nature. *Co. 3. 71.*

Also

Also a sale upon a Sunday, though in a Faire or Market overt, shall not be a good sale to alter the property of the goods: by *Brian*, 12. E. 4. fol. 1. b.

And indeed, Faires and Markets kept upon the Sabbath day, are prohibited by the Statute of 27. H. 6. cap. 5. And now by the Statutes, 1. El. cap. 2. & 3. Jac. cap. 4. All persons resorting upon the Sabbath day, to any Faire or Market, and by the meanes thereof absenting themselves from the Church, or not abiding at the Church orderly, during all the time of Prayer, Preaching, and other Divine Service, are to be punished by any one Justice of Peace, according to the forme of the said Statute 3. Jac. (which see *Hic postea titulo Recusants*) or by the Ordinary or Bishop of the Diocese, by the Statute 1. El. Or otherwise the offender may be indited (for such his absence from Church) at the Quarter Sessions of the Peace, or generall Gaole delivery.

Also the Lord of such a Faire or Market, kept upon the Sabbath day contrary to the Statute, may be therefore indited for the King, either at the Assises and generall Gaole delivery, or at the Quarter Sessions of the Peace within that County, *Plus hic cap. 49.*

Huy and Crie. CAP. 28.

EVERY Justice of Peace may cause Huy and Crie, fresh suit, and search to be made, upon any murder, robbery, theft, or other felonie committed: and this he may doe by force of the Commission, the first *Affignavimus Stat. Winch. 13. E. 1. cap. 1.*

13 E. 1. 1. 2.
27. Hen. 13.
P. 49.

Note that all Huy and Cries ought to be made immediately after the felony done, from Towne to Towne, & from County to County, & by horse-men & foot-men; otherwise it is no lawful pursuit. 28. Ed. 3. cap. 11

Note also, when Huy and Cry is levyed upon any robbery, or other felonie, the Officer of the Town where the felony was done (or Huy and Crie first levied) ought to send to every other Towne round about him, and not to one next Towne only: and in such cases it is needfull to give notice in writing (to the pursuers) of the things stollen, and of the colour and markes thereof, as also of the person of the Felon, his apparell and horse, &c. if it may be.

Sir *Nicholas Hyde*, in his charge at Cambridge Assises in Lent, 1629. delivered that Huy and Cry must be made or pursued with horse-men and foot-men; and that not onely a private search is to be made in every Towne, but that they must raise the Countrey as they goe, and all still to follow the Huy and Cry, as against a Common enemy. *Plus hic. cap. 109.*

Also the Officers of every Towne to which Huy and Cry shall come, ought to search in all suspected houses and places within their limits: And as well the Officers, as all other persons which shall pursue the Huy and Cry, may attach and stay all such persons, as in their search, or pursuit, they shall finde to be suspicious; and thereupon shall carry them before some Justice of Peace of the County where they are taken, to bee

H 2

examined

examined where they were at the time when the felony was committed, &c.

See more of Huy and Cry in the title *Robbery and Felony*.

Hunting. CAP. 29.

VPon information given to any Iustice of Peace of the County where any unlawfull hunting of Deere or Conies (by night, or with painted faces, or other disguising) in any Forrest, Park, or Warren, shall be had, of any person suspected thereof; that Iustice may make a Warrant to the Sheriffe, Constable, Bailiffe, or other Officers, to take the party, and to bring him before him, or before any other Iustice of Peace of the same County, who may examine him of that hunting, and of the doers thereof: And if he conceale that hunting, or any offender with him therein, then the same concealment shall be felony in such concealer. But if he then confesse the truth of all that he shall be examined of, and knoweth in that behalfe; then his offence of hunting shall bee but Trespasse, and finable: the fine to be assessed at the next generall Sessions of the Peace, by the Iustices there. See *postea tit. Felony by Stat.*

1. H. 7. c. 7.
P. Iust. 16.
* *Scene if*
they kill a
thing.

Also to disobey such a warrant, or to make *Rescous* hereupon, so that the execution of the same warrant thereby be not had, it is Felony. *Vide ut supra.*

The Iustice of Peace that shall take the examination of an offender for unlawfull hunting in Parks, &c. as aforesaid, may after such examination, binde the offender to his good behaviour, (as it seemeth) to the end he may be forth-comming till the offence, and residue of the offenders be fully examined: otherwise, if it shall after appeare, that the offender hath concealed any thing, whereby the offence becommeth felony, then the offender perhaps will not be found.

Also, all such unlawfull hunting, if it be by three, or moe, will prove a Ryot.

Whosoever shall have or keepe any Greyhound, or setting Dog (not having sufficient living according to this Statute;) or shall trace or course any Hare in the snow; or shall otherwise destroy, kill, or take any Hare; the said offences being proved, &c. before two Iustices of Peace, the said offenders shall be by them committed to the Gaole, &c. *Vide tit. Partridges*, more fully hereof.

1. Jac. 1. c. 17.
P. P. 16. c. 17.

And yet hunting and hawking, and such other pastimes, every man may use them upon his owne lands at his pleasure, so farre as they be not restrained by act of Parliament. But no man may make a Parke, or Warren within his owne ground, without the Kings grant or licence; and therefore such Parke or Warren (made without licence) seeme not to be within the Statute of 1. H. 7. 7. See *Br. Warren. 1. 2. & Co. L. 233.*

Co. 11. 16. 37

What a Parke is, and the difference betweene a Parke, a Forrest, and a Chase; and what be Beasts, or Fowles of Parke, Chase, and Warren. *Vide Co. L. 233.*

There be divers other Statutes made against hunting, &c. which bee very

very penall, but not to be dealt withall by the Iustices of Peace, except at their generall Sessions: See more of them *hic postea tit. Bailement. & Stat. 3. Jac. Regis, hic antea tit. Gunnus.*

Inrolment. CAP. 30.

^{27. H. 8. 16. 2. 1.} **A**ny one Iustice of Peace may joyne with the Clerke of the Peace, in taking the inrolment of any indenture of bargain and sale of lands, &c. lying in that County where he is Iustice, and it is good.

Now the said Iustice of Peace, and the Clerke of the Peace, are to take for the inrolling of the same Deed indented in parchment, &c. these fees following, *viz.* where the lands exceed not the yeerely value of 40. s. they are to take but ii. s. *sc.* xii. d. for the Iustice, and xii. d. for the Clerke: And where the lands exceed the yeerely value of 40. s. there they are to take 5. s. *sc.* ii. s. vi. d. for the Iustice, and ii. s. vi. d. for the Clerke. *ibid.*

Co. 5. 30. b.
P. 1.
Co. 1. 1. b.
Dallison
4. Eliz.
Dyer 118.

But such Deed (and all other Deeds to be inrolled according to this Statute) must bee indented *revera*, and must bee inrolled within sixe moneths after the date of the same Indenture: and if it have no date, then within sixe moneths after the delivery of the Deed, or if it bee inrolled, the very day of the Date of the Deed, or the very last day of the fix moneths, it is sufficient.

Note, herein you must account 28. dayes to every moneth, and not above (*sc.* foure weekes to the moneth.)

Co. 6. 63.

Note also the difference, when a Statute accounteth by the yeere, halfe yeere, or quarter, and when by the moneth; for a yeere, halfe a yeere, or a quarter of a yeere, shall bee accounted according to the Kalender, and by the dayes in the Kalender, and not after 28. dayes to the moneth. And a yeere, or a twelve-moneth (in the singular number) includes the whole yeere according to the Kalender. But twelve moneths (in the plurall number) or eight moneths, or six * moneths, &c. shall bee accounted after 28. dayes to every moneth: for the moneth by the Common Law of England, is but eight and twenty dayes; And so

Whereas $\left\{ \begin{array}{l} \text{three moneths,} \\ \text{six moneths,} \\ \text{twelve moneths,} \end{array} \right\}$ hath but $\left\{ \begin{array}{l} 84 \\ 168 \\ 336 \end{array} \right\}$ dayes.

* The $\left\{ \begin{array}{l} \text{quarter of a yeere,} \\ \text{halfe a yeere,} \\ \text{yeere,} \end{array} \right\}$ hath $\left\{ \begin{array}{l} 91 \\ 182 \\ 365 \end{array} \right\}$ dayes.

P. 31. 145.

*Ter Centum, ter viginti, cum quinque diebus,
Sex horas, neque plus, integer Annus habet.*

And as to these sixe houres, the Law giveth no regard to them; and yet these six houres every fourth yeere doe make a day, and so make the Leape-yeere: and this Leape-yeere containeth in it 366. dayes.

Note also for the yeere, that the Iulian yeere (instituted by *Iulius Caesar*) beginneth the first day of Ianuary, and so doth the Empire begin: the Hebrews, 1. April: the Church of Rome on their 25. of December: But in all matters Legall with us, the yeere beginneth not till the 25. day

day of March; and therefore when in an Indictment, or other Writing or Deed, it shall be set downe (or the Writing shall be dated) *Anno Dom.* 1617. it must be accounted according to the computation of the Church of England, which beginneth the yeere upon the 25. day of March; upon which day our Saviour Christ Jesus arose from death, as it is holden, *D. Whites* Def. 151. and upon which day Christ was conceived in the Virgins wombe, as some write (and so was borne in December: and then the yeere of our Lord must be accounted rather from his conception, and Incarnation, then his Nativity.) and upon which day the world was created, as it is holden by others: But I leave these things to such as have travelled in the searching out of Antiquities.

Labourers. CAP. 31.

One Justice. Every Justice of Peace, upon request, may cause all such Artificers ^{*Bible im- p. 11. 1014*} and other persons as be meet to labour, (by his discretion) to worke by the day in Hay-time, and Harveft-time, for the saving of corne and hay, and may upon their refusall imprison them in the stocks by the space of two dayes and one night.

Any one Justice of Peace may give licence under his hand and seale, ^{*p. 12*} to such Labourers as passe in Hay-harveft, and Corne-harveft, from one Country to another to worke.

Apprentice. Any one Justice of Peace (upon complaint to him made) may com- ^{*p. 13*} pell any person meet, (in his discretion) to be bound as an Apprentice (with any one that shall require him) to Husbandry, or any other Art, &c. And upon their refusall may commit them to ward, there to remaine untill they will be bound to serve as an Apprentice should serve, according to this Statute.

If any Master shall misuse his Apprentice; or that the said Apprentice ^{*p. 15*} shall have just cause to complaine; or if the Apprentice doe not his duty to his Master, upon complaint thereof made by the Master, or Apprentice, being grieved, to any one Justice of Peace of the Countie where such Master dwelleth, the said Justice (by his discretion) shall take order betweene the said Master and his Apprentice: and for want of conformity in the Master, the said Justice may binde him to appeare at the next Sessions to be holden in the said County (where the Justices of Peace, or foure of them, whereof one of them to be of the *Quorum*, if they shall thinke meet, may discharge the said Apprentice of his Apprentiship, and Indentures.) But if there shall be default in the Apprentice, the said Justices (at their said Sessions) may cause due correction to be ministred to him, as they shall thinke meet. Also it seemeth, that if the first Justice of Peace to whom complaint was made, shall finde the default to be in the Apprentice, that then the said Justice of Peace may send him to the house of correction, as an idle or disorderly person, by the Statute 7. *lac. cap. 4.* and needeth not to trouble the Sessions with him, *tamen quere.* ^{*7. lac. cap. 4.*} But from the Sessions they may send him, to the house of correction.

If an Apprentice shall steale or purloine any thing to the value of 12. d. or above, from his Master, the Apprentice, together with those that

that intised or perswaded him thereto, or that shall receive any of the same goods, knowing they were purloined, after due examination, and confession, or prooffe thereof made before any Iustice of Peace, He may send the Apprentice, as also the intisers, procurers, and receivers of those goods, to the common Gaole, &c. But if the goods be under the value of xii d. it seemeth the Apprentice, together with the procurers, and receivers, may be sent to the house of correction, by the Iustice of Peace, or rather by the Iustices at their generall Sessions. *Vide hic cap. 101. & 102.*

P. 5, 6. Any one Iustice of Peace may allow of the cause of putting away of a servant, or of the departure of a servant within his terme.

P. 35. But otherwise it is of an Apprentice, for an Apprentice cannot be discharged but by foure Iustices of Peace at the least, and in open Sessions as aforesaid; or else by the agreement of the Master and the Apprentice, and under his Masters hand in writing. And yet one that is retained as an Apprentice, may be seised by his Lord as a Ward, by reason the Lords title is more ancient.

Re. 27. 10.
P. 10. 159.
Fitz. 143. 5.

P. 6. Any two Iustices of Peace upon complaint to them made, that any servant (who is retained according to the Statute 5. *El.*) hath departed before the end of his terme (unless it be for some sufficient cause to be allowed by one Iustice of Peace at the least;) or at the end of his term, without one Quarters warning given before two witnesses; or that any person, compellable by the Statute to serve in Husbandrie, or in any other Science in the said Statute named, upon request made, hath refused to serve for the wages appointed (by Proclamation in that County, &c. according to this Statute;) or hath promised, or covenanted to serve, and doth not, according to the Tenour of the same, the said Iustices may examine the matter, and if they shall finde such servant or person faulty therein, they may commit him to Ward, there to remaine without baile, untill he shall be bound to the party offended, to serve and continue with him for the wages limited according to this Statute, and then to be discharged without paying any fee to the Gaoler.

And yet any one Iustice of Peace (as it seemeth) may make his Warrant, to attach a servant departed out of Service, or refusing to serve, to be before the Iustices at their Sessions, there to answer their defaults. See *pesteatit. Warrants. cap. 121.*

Also it seemeth, that any one Iustice of Peace may send such idle or disorderly servant to the house of correction, and that by the Statute of 7. *Iac. cap. 4.*

3 *El.* 2. 4.
P. 11.

Now by the Statute of 5. *El.* every person unmarried, and every other person (married) being under the age of thirtie yeeres, having beene brought up in any of the Arts, Sciences, or Trades in the Statute mentioned, is compellable to serve in any the said Trades, upon request made by any person using the same Trade; except such persons be lawfully retained with some other; or have xl. s. in land, &c. or xl. pound in goods, and so allowed by two Iustices of Peace, under their hands and seales; or have some Farme in tillage, whereupon to imploy themselves.

who be compellable to serve.

P. 1. Also, every person between the age of twelve yeeres and three-score, (not

(not being lawfully retained according to the Statute, nor being a Gentleman born, nor a Scholler; nor having meanes as aforesaid, nor parents living having x.li. in lands, or xl.li. in goods, and being their heire apparent) shall be compellable to serve in Husbandry by the yeere, upon request, &c. See more what persons be compellable to serve, *Hic posita.* P. Inst. 601
& Lamb. 41

Any two Justices of peace may imprison without baile, the Master for ten dayes, and the servant, work-man, or Labourer, for xxi. dayes, that shall give, or shall take, or receive excessive wages, *scilicet* any greater wages, or other commodity, contrary to the rates or wages assessed by the Justices of Peace at their Easter generall Sessions, and Proclamation thereof made in that County. 5. Eliz. 4.
P. 41

Now concerning the wages of servants, &c. The Justices of Peace (at their Easter Quarter Sessions) shall doe well to assess the wages in such manner, as that servants, &c. may reasonably maintaine themselves therewith: And that their Masters should in no wise exceed or give above such wages, by way of Contract: But yet Masters may reward a well deserving servant, &c. (over and above his wages) according as he shall deserve; So that it be not by way of promise, or agreement, upon his Reteiner. See the preamble of the Statute 5. *Eliz.* 4. that considering the advancement of prices of all things belonging to servants and Labourers, if more reasonable wages and allowances be not given them then is limited by former Statutes, it would be too great a griefe and burden to the poore hired servant and labourer.

Note that every Reteiner, promise, or payment of wages, or other thing whatsoever, contrary to the true meaning of this Statute, And every Writing and Bond made for that purpose, shall be utterly void. 11 Ed. 4.

Note also that by the Stat. 5. *Eliz.* no person shall hire or retaine a servant for lesse time then for one whole yeere. But this seemeth to extend to Artificers or Tradesmen, and only to such Trades as are named in this Statute, and not to Husbandry. P. 41

The Arts and Trades mentioned in the Statute of 5. *Eliz.* are these following, *viz.* Arrow-head makers, Bakers, Brewers, Butchers, Bowyers, Cappers, Clothiers, Cloth-workers, Cookes, Cutlers, Curriers, Dyers, Ferrors, Felt-makers, Fletchers, Fullers, Glovers, Hat-makers, Hosiers, Millers, Pewterers, Sadlers, Sheere-men, Shoo-makers, Smiths, Spurriers, Taylers, Tanners, Tuckers, Turners, and Woollen cloth Weavers.

And yet no Reteiner of any servant for lesse time then for one whole yeere is good, or according to Law. See *Fitz.* 168. h. *Co. L.* 42. b.

*Affault his
Master.*

Any two Justices of Peace of the County where the offence hereunder mentioned shall be committed, may imprison by the space of one yeere or lesse, by their discretions, any such servant, work-man, or Labourer, as shall wilfully make any assault or affray upon his Master, or upon any other having the charge or oversight of him, or of his worke, the said offence being proved before the said Justices by confession of the said servant, &c. or by the oath of two honest men. P. 121

And yet upon complaint thereof made to any one Justice of Peace, that Justice may binde the offender to his good behaviour, and so to the next

next Sessions, and there the offender may be convicted and punished according to the Statute.

P. 24. Any two Justices of Peace may compell any woman (being of the age of twelve yeeres, and under forty, and unmarried, and forth of service) whom they shall thinke meet to serve, to be retained in service, by the yeere, weeke, or day, for such wages, and in such sort as they shall think it meet. And if such woman shall refuse, they may commit her to ward, untill she shall be bound to serve as is aforesaid.

Any two Justices of Peace may make a testimoniall to a Serving-man that is turned away from his Master, or whose Master is dead. 14. Eliz. cap. 5. *quare*, if this be still in force. *Lamb.* 326.

For Clothiers which will not pay their work-men such wages as shall be assessed by the Justices at their Sessions, See the title of *Cloth.*

The certificate which is to be made to the head Officer of any City or Towne corporate, where a child is to be bound Apprentice, (*sc.* that the father of such childe may dispend 40. s. *per annum*) must bee under the hands and seales of three Justices of the Peace of the Shire where the land lieth. Three Justices.

The reason of this Law seemeth to be, for that such as be to be bound Apprentices in Corporate Townes, &c. if their Parents be of a competent livelyhood, then their Masters shall not only be the better secured, &c. but such Apprentices also in likelyhood shall have the better meanes to set up their Trades after their time expired. And concerning such whose Parents have not forty shillings *per annum*, they are fitter to be bound Apprentices to Husbandrie, &c. in the Countrey.

But concerning this certificate, it seemeth not much in use at this day: neither is this certificate so of the substance of the matter, or so materiall, that for want thereof the Indentures for the binding of such an Apprentice shall be void, (for the Justices of Peace cannot be compelled to certifie, &c.) but if the Parents have 40. s. *per annum*, it sufficeth: and so were the opinions of Sir *Humphrey Winch*, and Sir *William Jones*, in the Court of Common Pleas *Termine Pasch. anno 21. Jacobi Regis*. But Sir *Henrie Hobart*, Lord chiefe Iustice of the Common Pleas, did not then deliver his opinion therein directly; yet he seemed to me to hold, That the Parents of such an Apprentice ought to have 40. s. *per annum*, and also ought to procure such a certificate from the Justices of Peace.

Here I thinke it not amisse to set downe certaine Cases, some of them being by way of exposition of this Statute 5. Eliz. cap. 4. And other some at the Common Law, or grounded upon former Statutes, yet such as may give light and helpe to our Iustices of Peace in this businesse.

Co. 11. 53. First, by the Common Law no man may be prohibited to worke in any lawfull Trade, for the Law abhorreth idlenesse, as the mother of all evill.

Co. 11. 86. A man cannot be restrained to use the Trade of making Dice, Cards, Bowles, or the like, (except it be by Parliament) for all Trades which do avoid idlenesse, and exercise men in labour, for the maintenance of them and their families, and for to increase their substance, and to serve the King when need shall bee, are profitable for the Common-wealth, and therefore

therefore the restraining of them is against the Law, &c. *Co. 11. 86.*

Also by the Common Law, no man is prohibited to use divers My-
steries or Trades at his pleasure; and although this was prohibited by the *Co. 11. 38.*
Statute of 37. *Ed. 3. cap. 6.* yet presently at the next Parliament (that re-
straint of free Trade being found prejudiciall to the Common wealth)
it was enacted againe, that all persons should be as free as they were at
any time before the said Statute. *Co. 11. 54.* See the Statute of 38. *Ed.*
3. *cap. 2.*

For that without an Act of Parliament, no man may be restrained in *Ibid.*
any manner, either to worke in any lawfull Trade, or to use divers My-
steries, or Trades; therefore ordinances made to restraine any person
therein, are against the Law: and yet ordinances made for the good or-
der and government of Tradesmen, &c. are good. *Co. ibid.*

Also it is lawfull for any person to use privately any Trade (as of a *Ibid.*
Cooke, Brewer, Baker, or Tayler, &c.) in his owne house, or in the house
of any other, for the private use of the family, although such person were
never Apprentice to the Trade. *Co. ibid.*

If a man use the Trade of Tallow-Chaundler, Baker, Brewer, or any
other lawfull Trade, or manuell Occupation, for his owne use, or for the
use of his family, without selling any for lucre and gaine, hee may law-
fully doe it. *Co. 8. 129, 130.*

And yet he which useth any Trade, or other manuell Occupation, for
the use of himselfe, or of his family only (without selling) he cannot re-
taine any Apprentice within the Statute of 5. *Eliz. Co. 8. 129.* But hee
may hire one to be his servant, who is skilfull in that Trade or Occupa-
tion.

One purchased a Mill, & hired a Miller to be his servant, who grownd
the grists of his neighbours, and the wife of the owner of the Mill tooke
money of the neighbours for their grists so grownd, and for this the hus-
band (who was owner of the Mill) was indited at Cambridge Summer
Assises, *Anno Dom. 1619* by reason that he was never himselfe Appren-
tice to the Trade: It was the case of *T. P. Yeoman.*

The intent of this Statute 5. *Eliz. cap. 4.* was that no person should
take upon them any Art, Mystery, or Trade, &c. but such wherein they
had skill and knowledge, according to the Rule, *Quod quisque norit in hoc*
se exerceat. Co. 8. 130.

And therefore none may keepe a common Brew-house, Bake-house,
Cookees-shop, &c. to sell to others, except they have beene Apprentice
thereto by the space of seven yeeres, &c. *Ibid.*

Note that these words, Mystery, Trade, and Craft, doe all beare one
sense or signification. See *Pl. 537. b. Co. 11. 54.*

Note next, that this Statute, 5. *Eliz. cap. 4.* extendeth not to Serving- *Crompt. 154.*
men, but to servants in Husbandrie, and Handi-crafts: And yet where
the words of the Statute be, Servant generally, there it seemeth to ex-
tend to all.

An Apprentice must be retained by Indenture, and by the name of an *Crompt. 154.*
Apprentice expressly, or else he is no Apprentice, though he be bound.
Who are compellable to serve, See in this title before and after.

Every

who he com-
pellable to
serve,

Fin. 163. b. Every Justice of Peace may command vagrant persons to prison, if they will not serve.

Fin. 167. a. 168. i. Every person who hath not sufficient lands to occupy, or live upon, nor other Art, is compellable to serve. See *Br. 14.*

Fin. 168. d. c. P. 1. 14. Br. Ley 67. If an Infant, man or woman, of twelve yeeres of age, or a Gentleman, Chaplaine, Carpenter, or other person which is not compellable to serve, yet if they shall make a covenant to serve in Husbandry, they shall be bound by their covenant, and are punishable if they then shall depart, &c.

7. H. 4. v. 2. H. 4. 18. Br. 19, 20. Yet by the Common Law such a covenant or retainer of an Infant under twelve yeeres of age was void, they neither having ability of body, nor yeeres to consent: for an Infant (by the Common Law) is not of age to binde it selfe by covenant, *ante annos nobiles*, which is 12. yeeres in a woman, and 14. yeeres in a man-childe. *Co. 7. 43. & 9. 72.* Neither before that age are they accounted, *potens in corpore*, which were the words used in the Statute made 23. *E. 3.* though those words are now left out of the Statute 5. *Eliz.* And thereupon *Markham*, in 21. *H. 6.* and *M. Br.* abridging that case, seeme to hold 14. yeeres to be the age for re-ainer of an Infant, but there the case was of a man-childe that was retained.

P. 15. 23. But now by the Statute 5. *El. cap. 4.* any person above the age of ten yeeres, by their owne consent and agreement, may by Indenture bee bound as an Apprentice to Husbandry, or any other Trade or Art.

P. 1. 14. 23. Also one of twelve yeeres of age by the same statute is compellable by the Justice to serve in Husbandry: so also it seemeth of other Trades, Arts, or Occupations.

Such children whose parents are not able to maintaine them, though they be under twelve, yea if they be but above seven, yet may they bee bound Apprentices by the Overseers of the poore, with the assent of any two Justices of Peace, by the statute of 43. *El. cap. 2.* See *postea sit. poore.*

11. R. 2. c. 5. 145. If a childe use Husbandry till the age of twelve yeeres, and after bee made an Apprentice to any Mystery, his covenant shall bee void: but this Statute of *R. 2.* seemeth to be repealed by the generall words of 5. *El. 4.*

And now though such childe hath used Husbandry till his age of 12. yeeres, yet if he be not bound as an Apprentice to husbandry, (and that his parents be not able to maintaine him) then it seemeth that the overseers for the poore, by the assent of the Justices, may binde as an Apprentice such a childe, according to the statute 43. *Eliz. cap. 2.* and that by force of the said statute, *P. sit. Poore. 2. 5.* And any person to whom the Overseers shall so binde such an Apprentice, may take and keep him as his Apprentice, &c. 1. *Iac. 25. & 21. Iac. 28.*

2. H. 4. fo. 13. Br. 18. Fin. 168. a. If a woman who is a servant, shall marie, yet she must serve out her time, and her husband cannot take her out of her *M. service.*

A married man and his wife doe binde themselves to serve, they shall bee compelled to serve according to their covenant or agreement, *Fin. 168.*

But

But a man that holdeth land of his Lord, to doe certaine dayes works yeerely, shall not be compelled to serve. 40. E. 3. 39. *Crompt.* 185.

A servant may be compelled to serve in Summer in the place where he served in the Winter before: But this seemeth to have beene only by force of the statute made *Anno 25. E. 3. cap. 2.* which statute now standeth repealed by the statute made 5. *Eliz. cap. 4.*

What retainer is good.

If a man who is not able nor sufficient to keepe a servant, shall retaine *Fitz. 168.b.* a servant, such reteinor is void, *Br. 25.*

If a man retaineth a Labourer or servant, to serve him according to the statute, though no wages be spoken of upon the reteinor, yet the reteinor is good, and they shall have such wages as is assessed and appointed by Proclamation, for that wages is certaine. See to this purpose, the Booke, 3. *H. 6. fol. 23. Br. 1.*

If a man reteineth another, except the reteinor bee according to the Statute, it seemeth to be void; without it be by Indenture, and then being by Deed, he is bound by his Covenant. See *Fitz. N. B. 168. f.*

Reteinor upon condition, seemeth to be a good Reteinor. See 11. *H. 4. 42. Br. 23.*

A man retaineth a servant to serve him, generally, not expressing in what office, or in what businesse (as to say to serve him in Husbandry, or in the office of a Cooke, Butler, or Horse-keeper, &c.) yet such Reteinor seemeth to be good. 21. *H. 6. 9. Br. Labor. 29.*

A man is reteined to serve during his life, it seemeth a good Reteinor *Br. 44. 2. H. 4. fol. 15.* And so for three yeers or moe. *Fitz. 168.*

A man is reteined for one yeere, to serve at any time when he shall be thereto required; this is no good Reteinor. See 22. *H. 6. 30. Br. 31.*

Reteinor of a servant generally without expressing any certain term, shall be for one yeere (in construction of Law) for that Reteinor is according to Law. *Fitz. 169.b. P. 1. Co. L. 41.b.*

A. reteineth a servant for forty dayes, and after *B.* reteineth the same servant for one yeere: The first reteinor by *A.* is defeated and become void. *Br. 51.* See 11. *H. 6. 1. Br. 49.*

If a servant, who is reteined, shall depart out of his service, and wander, he may be compelled to serve another man; but yet the first Master may take him away againe: See *Br. Notice 2. 4.* And besides it is safe to get the consent of his first Master, for now by the Statute 5. *Eliz. c. 4. p. 2.* the master reteining a servant that is departed out of service, without shewing before his Reteinor, a testimoniall, shall forfeit v. li. *Fitz. 168.b.*

A man that reteineth a servant, ought to take notice of every former Reteinor within the same Countie; otherwise it is of a Reteinor in another Countie, 17. *E. 4. fol. 7. Br. Notice 20.*

And yet Master *Fitzb.* opinion was, That if one reteineth another mans servant (generally) not knowing that he was another mans hired servant, he was not punishable therefore, except he should deteine him after notice thereof: but now the Master may and must take notice whether he hath a testimoniall or no (as it seemeth.) *Fitz. 168.b. Br. 17. 39. 13. Dr. 31. 49.*

Departure of a servant.

If one taketh an Infant, or other servant out of another mans service, this is punishable, though the Infant or servant was not reteined; but if

an

an Infant being reteined as an Apprentice or servant, fall to be a Ward, the Lord may take him from his Master, for the Lords title is more ancient: yet here it seemeth the Lord ought first to give notice thereof to his Master, 50. E. 3. 22. *Br. Labor.* 17. See *Br. Notice.* 2. 4.

Note, that by the Reteiner, the servant is in service presently by Law, although he cometh not into his Masters service indeed, 41. E. 3. 20. 46. E. 3. 4. 47. E. 3. 14. *Br.* 9. 11.

If a servant shall depart from his Master, his master may take him againe, and reteine and keepe him whether he will or no. See the title, *Suretie for the peace.* And the Constable may take and bring such Servant to his Master againe, *Fitz. Labor.* 56.

The Master cannot discharge his servant, during his terme, &c. without the agreement of the servant; And now by the Statute 5. *Eliz.* 4. it must be for some reasonable cause, to be allowed by one Justice of peace at least, &c. *Vide P.* 5. otherwise the Master shall forfeit xl.s. *Tamen quare:* for where the departure or putting away of the servāt is by the joint consent of the master and of the servant, such putting away or departure, seemeth not to be within the Statute of 5. *El.* neither is the allowance of the Justice of Peace requisite or needfull therein.

The Master may discharge his servant by word; but an Apprentice cannot be discharged by his Master, except it be by writing: for that an Apprentice cannot be but by writing.

If a servant shall be put away by his Master, yet he shall have his wages for the time hee served. And yet in this case if the servant agree thereto, the servant shall have no Action to recover any part of his wages, but must crave the helpe of the Justice of Peace herein: but if such servant be within age, it seemeth such agreement shall not prejudice the servant.

But if a servant of his own accord shall depart from his Master before his time expired, he shall lose all his wages.

If a servant be retained according to the Statute, and the Master dyeth, his Executors shall be chargeable to pay such servant his wages. Otherwise it is where the reteiner was not according to the statute, except it were by Indenture. See 2. *H.* 4. 15. *Br. Lab.* 44. & *Fitz. Nat.* *Br.* 168. f.

An infant of five yeeres of age, or other person which is not *potens in corpore*, yet if they shall be reteined, and shall serve indeed, their Master must pay them their wages. See 38. *H.* 6. 22. *Br. Lab.* 46. & *Ley Gager* 67.

If a servant retained for a yeere, happen within the time of his service to fall sicke, or to be hurt or lamed, or otherwise to become *non potens in corpore*, by the act of God, or in doing his Masters businesse, yet it seemeth the Master must not therefore put such servant away, nor abate any part of his wages for such time.

If a servant shall refuse to doe his service, this is a departure in law, although he stay still with his Master.

If the Master shall deteine from his servant his wages; meate, or drinke; this is a good cause of departure: But yet this cause is now by the Statute of 5. *Eliz.* to bee allowed of by the Iustice of Peace,

before the servant may lawfully or safely depart.

So if the Master shall licence his servant to depart, or if the Master or wife of the Master shall beat the servant, these were good causes for the servant to depart, before the Statute 5. *Eliz.* 4. but now the allowance of the Iustice of Peace is requisite as aforesaid. And yet note, that the Master by law is allowed, with moderation to chastise his servant or Apprentice, see 33 *H. 8. cap. 12.* and in the title, *Suretie for the peace.* Fitz. 108. 1. 4.
Br. 514.
P. 4.

But now that by the Statute of 5. *Eliz.* the causes of putting away and departing of servants are referred to the consideration and allowance of the Justices of Peace; it behooveth them to have good care, lest by their giving too much way therein, either to the Master or servant, many which might by due ordering have proved good servants, turne Rogues and Vagabonds.

No person (retained in Husbandry, or in any the Arts or Sciences mentioned in the Statute of 5. *Eliz. cap. 4.*) after his retenir expired, may depart out of one Limit, Towne, or Parish, into another, without a testimoniall under the seale of the Officer of the Towne where hee last served, &c. Neither may any person take into his service any servant so departing, without shewing such testimoniall; upon paine that every person retaining any such servant without such testimoniall, shall forfeit 5. li. being thereof convicted; upon inditement taken in the Sessions of the Peace, &c. and upon paine that every servant so departing without such testimoniall, shall be imprisoned untill he procure a testimoniall, the which if he cannot doe within the space of twenty one dayes next after the first day of his imprisonment, then he is to be whipped and used as a vagabond: and so if hee bee taken with any counterfeited or forged testimoniall. 5. *Eliz. cap. 4. P. 7, 8.*

London. CAP. 32.

NO new buildings shall be erected for habitation, within three miles of London; nor any building shall be divided or converted to severall habitations there, except such houses shall be fit for the dwelling of such a person as heretofore hath bene assessed to the Subsidie of v. li. in goods, or iii. li. in lands, at the assessment next before the said building or division, or as shall bee adjudged by the two next Iustices of Peace (by writing under their hands and seales, to bee presented at the next Quarter Sessions) to be fit and able to be so assessed in the Subsidie, 35. *El. 6.* 35. *Eliz. 6.*

The two next Iustices of Peace have power to decide and determine of the sufficiency and conveniency of such houses, and of the sufficiency of the inhabitants therein, *ibid.*

Mault. CAP. 33.

One Justice. THE Constables or Bailiffe of any Towne, where any deceitfull Maults shall bee made or mingled, to bee sold contrary to the Statute 2 Ed. 6. 16.
27. *Eliz.* 14.
1. *Inc.* 15.
P. 4.

rule 2. *Ed. 6.* may from time to time view and search all such Mault, as shall be made or put to sale within any of their Townes; and if thereupon they shall finde any Mault put to sale, being evill made, or mingled with evill Mault, contrary to this Statute; then the said Constable or Bailiffe, so finding any such deceitfull Mault, with the advice of any one Justice of Peace, may cause the same to bee sold to such persons, and at such reasonable prices, as to the discretion of the same Justice shall seem expedient, 21. *Jac. cap. 28. & 3. Car. 4.*

These deceitfull Maults be of three sorts, *sc.* such as be not well made; or not well dressed; Or mixed: As,

1. First, if any Barley-Mault shall be made (in the moneths of June, July, and August onely excepted) if the same Mault shall not have in the making thereof *sc.* in the sat, floore, steeping, and drying thereof three weekes at the least: and in the moneths of June, July, and August, seven-teene dayes at the least. For under such times the Mault cannot be well made, nor wholesome for mans body: and Maults not sufficiently dried cannot be kept long, but will be mustie and full of wevils.

2. Secondly, if any Maults shall be put to sale which be not well trodden, rubbed, and well fanned.

3. Thirdly, if any Maults be mingled, *sc.* Maults not well made as aforesaid, or made of Mow-burnt, or spired Barley, and mixed with good Maults, and so put to sale.

The Iustices of Peace at their Quarter Sessions (or the more part of ^{Two Justices} them) at all times may suppress and discharge, or restraine the number of Maultsters; and also may restraine such persons as they shall thinke meet, for buying Barley to convert to Mault. And if any person shall refuse, disobey, or not performe such suppressing, discharge, or restraint or any other order which the said Iustices in their Sessions shal set down touching the same; then, and so often such person, being thereof duly convicted before the Justices at their Quarter Sessions, or before any two Iustices of Peace out of their Sessions (by his owne confession, or by two witnesses) shall be by the said Iustices committed to the common Gaole, there to remaine without baile for three dayes, and after that untill hee shall become bound by Recognizance in forty pounds to the Kings use, before some one Justice of Peace, to performe and obey such order, suppressing, discharge, or restraint, So that any two Justices of Peace may convict such offenders (upon their confession, or by two witnesses) and then may commit them, as aforesaid: and after, any one Justice of Peace ^{One Justice} may take such Recognizance, as aforesaid.

Mariners. CAP. 34.

NO Fisherman using the Sea shall bee taken to serve as a Mariner by the Kings Commission, but by the choice of two Justices of Peace next adjoyning to the place where he is taken.

See more for Mariners, *titul: Rogue, and Souldier.*

Night-walkers. CAP. 35.

Every Iustice of Peace (*ex officio*, and by the Commission; the first *Lamb. 46. 112.* *Assignavimus*) may cause to be arrested all Night-walkers, bee they *21. H. 7. in* strangers or other persons that be suspected, or that be of evil behaviour, *See 112.* or of evill fame: and more particularly all such suspected persons as shall *Watch* sleepe in the day time, and goe abroad in the nights; And all such as shall in the night season haunt any house that is suspected for bawderie; Or shall in the night time use other suspicious company; Or shall commit any other outrages or misdemeanours; and may force them to finde surety for their good behaviour. See the title, *Surety for the good behaviour, cap. 75.*

For as one saith, such Night-walkers (or Night-birds) are ominous, like the Whistler, &c. and such night-walkings are unfit for honest men, and more futing to the Theefe (the right Whistler,) and to beasts of the prey, which come forth of their dens, when man goes to his rest. *P. 112.*

Oath. CAP. 36.

One Iustice. Any one Iustice of Peace may compell such as are betweene the age *Lamb. 196.* of fifteene yeers and threescore, to be sworne to keepe the Peace. See the Statute of *Winchest. 13. E. 1. cap. 6.* And the Articles of Inquisition upon the said Statute of *Winchest. made about Anno 34. E. 1.*

Any two Iustices of the Peace (the one being of the *Quorum*) may require any person of the age of eightene yeeres or above (under the degree of a Baron or Baronesse) to take the oath of allegiance, and upon their refusall, may commit them to the common Gaole, there to remain without baile till the next Assises, or Quarter Sessions. *7. Jac. 5.*

Two Justices, &c. may take the oaths of the under-Sheriffes, and their Officers, &c. See the title *Sheriffes.*

Partridges. CAP. 37.

Every Iustice of Peace (by the Statute of 23. *Eliz.*) may examine all offences, for the destroying or taking of Partridges or Fefants in the night time; and for hawking or hunting with Spaniels, in any eared or codded corne: and may binde by Recognizance the offenders with good Sureties to appeare at the next generall Sessions of the Peace to answer their said offences, &c. *23. Eliz. 104. P. Fefants 4. P. 112. 35.*

Two Justices. But now by the Statutes made 1. *Jac. 27. & 7. Jac. 11.* the offences of destroying, &c. of Partridges and Fefants (generally) is referred to two Iustices of Peace, to examine, heare, and determine out of Sessions. *Vide hic infra.*

Also after the conviction of any such offender (according to the Statute of 23. *Eliz.*) for taking or destroying any Partridges or Fefants in the *23. Eliz. 104. P. Ibid.*

the night time, any one Iustice of Peace of that County, may bind such offenders with good sureties, that (for the space of two yeeres) they shall not take or destroy any Partridges or Fesants contrary to that Statute.

1. By the Statute made 1. Jac. Every person which shall shoot at, kill, or destroy (with any gun or bow) any Partridge, Fesant, House dove, Pigeon, Hearne, Mallard, Ducke, Teale, or any such Fowle, or any Hare :

2. Or shall take, kill, or destroy any Partridge, Fesant, House-dove, or Pigeon, with setting dogs and nets, or with any manner of nets, snares, engines, or instruments :

3. Or shall take out of their nests, or willingly destroy, or break in the nest, the egges of any Fesant, Partridge, or Swan :

4. Or shall trace or course any Hare in the snow :

5. Or shall at any time take, or destroy any Hare with cords, or any such instruments :

6. Or shall have or keepe any Greyhound for Deare, or Hare; or setting Dog, or Net, to take Fesants or Partridges (except they have lands, &c. of inheritance of the cleere yeerely value of x.li. or xxx.li. *per annum* for life, or goods worth 200.li. or be the sonne of a Knight, or of some person of higher degree, or the sonne and heire apparent of an Esquire) the said offences being proved by the confession of the party, or by the oath of two sufficient witnesses, before any two Iustices of Peace (of the County where the offence shall be committed, or the offender apprehended) shall by the said Justices (for every such offence) be committed to the common Gaole for three moneths, without baile, unless the said offender shall forthwith upon the said conviction, pay to the use of the poore there, xx. s. for every Hare, Fowle, and Egge, so taken or destroyed; and forty shillings for having such Greyhound, setting Dog; or Net; Or after one moneth after his commitment, become bound by recognizance with two sufficient Sureties in xx. li. a peece with condition not to offend thereafter, in any the particulars aforesaid. Which said Recognizance shall be taken by any two Iustices of Peace of the County where the offender is imprisoned, and by them shall be returned to their then next Quarter Sessions.

Also it may seeme by the generall words of the Statute, that any two Iustices of Peace may in like manner proceed to examine and punish the offences of selling, or buying to sell againe, any Deere, Hare, Partridge, or Fesant, contrary to this Statute; for the words of the Statute be, That any two Justices of Peace, or more together, out of any Sessions, may examine, heare, and determine all offences against this Statute made 1. Jac. Regis, and may performe every other thing requisite for the due execution thereof.

By the Statute made 7. Jac. Regis, every person which shall take, kill, or destroy any Fesant, or Partridge, with setting Dogs, and Nets, or with any manner of Nets, Snares, or Engines (it being proved by the confession of the party, or by the oath of one sufficient witness before any two Justices of Peace) shall by the said Justices be committed for three moneths without baile; unless the said offender shall forthwith pay to

1. Jac. 17.
P. Fesants.
4. 7.
11. Jac. 18.
3. Can. 4.

1. Jac. 17.

7. Jac. 17.
11. Jac. 18.

the use of the poore there, xx. s. for every such Fesant, and Partridge : And further, to become bound by Recognizance in the summe of xx. li. never to take, kill, or destroy any Fesant, or Partridge any more; which Recognizance shall be taken by any one Justice of Peace of the Countie where the offence shall be committed, and shall be returned to the next Quarter Sessions.

Every person which shall hawke at, kill, or destroy any Fesant, or Partridge, with any kinde of Hawke; or Dog, (by colour of hawking) ^{7. Jac. 11.} ^{21 Jac. 38.} betweene the first of July, and the last day of August, (the same being proved by the confession of the party, or by the oath of two sufficient witnesses, before any two Justices of Peace of the County where the offence was committed, or the offender apprehended) shall by the said Justices bee committed to the common Gaole, there to remaine for one moneth without baile, unlessse the said offender shall forthwith upon the said conviction, pay to the use of the poore there (where the offence shall be committed, or the party apprehended) xl. s. for every such hawking at Fesant or Partridge, and xx. s. for every Fesant or Partridge, which any, and every such offender by himselfe, his Hawke, or Dog, shall take, kill, or destroy, contrary to the intent of this Statute.

But no offender punished by vertue of this Law, shall be punished by ^{7. Jac. 11.} vertue of any other Law, for the same offence. Also such offences must be complained of to the Justices of peace, within fixe moneths after the offence.

Any two Justices of Peace may make their Warrant under their hands, ^{7. Jac. 11.} to any Constable, to enter into, & search the houses of any person (other then of such as have free Warren, or are Lords of any Mannour, or have Free-hold of xl. li. by the yeere, or more, of some estate of inheritance, or have fourescore pounds by the yeere for terme of life, or be worth in goods 400. li.) being suspected to have any setting-dogs, or any manner of nets, for the taking of Fesants and Partridges: And wheresoever they shall finde any such dog or nets, the same to take, carie away, detaine, kill, destroy, and cut in peeces.

By the same Statute ^{7. Jac. cap. 11.} every such person as hath free Warren, or is Lord of a Mannour, or hath other estate as aforesaid, is allowed (on their owne free Warren, Mannour, or Free-hold) to take Fesants and Partridges in the day time onely, and betweene Michaelmas and Christmas.

Peace. C A P. 38.

EVERY Justice of Peace hath authority and power given him (by the first *Assignavimus*, or clause in the Commission) to keepe and cause to be kept the Kings Majesties peace; by force of which words they have as well the ancient power touching the keeping of the Peace, which the ancient Conversators of the Peace had by the Common Law; as also all authority which the Statutes since have added thereto : And so they may cause to be kept all the Statutes and Lawes now in force; which ^{Lamb 46.} been

been made for the Peace, or keeping thereof: and more especially they may arrest, or cause to be arrested, and sent to the Gaole, all murderers, robbers, and felons, and all persons suspected of such things.

They may also suppress, and binde to the Peace, or good behaviour, all Affrayors, and all persons unlawfully and riotously assembled, or unlawfully wearing armour, or any weapons, by night or by day, or otherwise putting the people in feare, and all unlawfull night-walkers, and the like: All which may well be said to be disturbances or breaches of the Peace. See more for these under their particular titles.

If any Affray, Forcible Entrie, or other thing in disturbance of the Peace be made or committed in the presence, or within the view of a Justice of Peace, he hath power to record it, and to certifie the same, and also to commit the parties to ward, presently upon the fact done: But if there bee any meane, space, or time, then hee cannot commit them to ward, but he may record the same, and may (at any time after make his Warrant to take them, and) binde them with Sureties, to their good behaviour, and for want of Sureties may send them to the Gaole. *Cro. 41. per Curiam.*

If the Justice of Peace shall certifie into the Kings Bench, that *J. S.* hath broken the Peace in his presence, upon this certificate *J. S.* shall be there fined, without allowing him any Traverse thereto. *Marr. Lett. 3. Cromp. 132.*

Plague. CAP. 39.

IF any person infected, or being, or dwelling in an house infected with the plague, shall be by any Justice of Peace (or other Officer) commanded to keepe his house, and notwithstanding shall wilfully goe abroad, and converse in company, having any infectious sore upon him, it is felony: and if such person shall not have such sore about him, yet for his said offence he shall be punished as a Vagabond (by the appointment of any Justice of Peace, as it seemeth) and further shall be bound to his good behaviour, for one whole yeere. *One Justice.*

It shall be lawfull for the Justices, or any one Justice of Peace (and other head Officers in Corporate Townes) within their severall limits, to appoint Searchers, Watch-men, Examiners, Keepers, and Buriers, for the persons and places infected: and to minister to them oaths, for the performance of their said severall offices: and to give them other directions, as to them shall seeme good, see *Cromp. 122. b.*

If any person infected, or dwelling, or being in an house infected, shall contrary to the commandement or appointment of the Justice of Peace (or other Officer) wilfully attempt to goe abroad, or to resist such their Keepers or Watch-men, then may such Watch-men with violence enforce them to keepe their houses, &c. *Ibidem.*

Any two Justices of Peace (or any two head Officers) of any Citie, Borough, Towne corporate, and Place priviledged, may tax all and every inhabitant, and all houses of habitation, lands, tenements, and heredita- *Two Justices.*

ditaments, within the said Citie or Borough, &c. or the liberties thereof (at such reasonable taxes, as they shall think fit) for the reasonable releefe of such persons as are infected, or inhabiting in houses infected in the same City, &c. And may levy the said taxes (by distresse and sale of the goods of every person refusing, or neglecting to pay the said taxes) by warrant under the hands and seales of two such Iustices, or head Officers, to be directed to any person or persons, for the execution thereof: and in default of such distresse, & that refusall be made of payment, upon returne thereof, the said Iustice (or Officers) by like Warrant may commit such person to the Gaole, there to remaine without baile, untill he shall satisfie the same taxation, and the arrerages.

If the inhabitants of any such City, &c. are unable to releefe their infected persons, &c. upon certificate thereof by the head Officer, and other Iustices of Peace of such Citie, &c. or by any two of them, to any two Justices of Peace of the Countie of, or neere to the said Citie, &c. so infected; Any two Iustices of or neere the said County, may tax the inhabitants of the Countie within five miles of the said place infected, at such reasonable weekly rates as they shall thinke fit, to be levied by Warrant from any two such Iustices of Peace, of or neere the said County, by distresse, and sale of goods, and in default thereof, by imprisonment of the body of the party taxed as aforesaid.

If any such infection shall bee in any Borough or Towne corporate, where there are no Justices of Peace, or within a Village within any Countie; then any two Justices of Peace of the same County wherein the said place infected shall be, may tax the inhabitants of the said County, within five miles of the said place infected, at such reasonable weekly rates, as they shall thinke fit, for the releefe of the said places infected, to be levied by distresse and sale of goods (upon Warrant from the said Iustices of Peace of the same County) and in default thereof by imprisonment, as aforesaid.

All such taxes made by the Justices of the County, for the releefe of such City, &c. shall be disposed by the said Justices of the said Countie, and as they shall thinke fit (where there are no Iustices of Peace in such Citie, &c.) And where there are Iustices of Peace, then in such sort as the head Officer and Iustices of Peace there, or any two of them shall thinke fit.

All such taxes made either in Citie, &c. or Countie, shall by the said Justices that taxed them, (as it seemeth) be certified at their next Quarter Sessions to be holden within such Citie, &c. or Countie, respectively, there to be continued, enlarged, extended to other parts of the Countie, or determined, as at the said Sessions shall be thought fit.

But no Justice of Peace shall doe or execute any thing before mentioned, within either of the Universities of Cambridge or Oxford, or within any Cathedrall Church, or the liberties thereof, or within the Colleges of Eaton or Winchester; but the Vice-Chancellor of the Universitie, Bishop, and Deane of such Church, and Provost or Warden of the said Colleges shall doe and execute all things above mentioned, within their severall Precincts.

Poore. CAP. 40.

P. 4.
43. Eliz. 2.

ANy one of those Justices of Peace who may appoint Overseers for ^{One Justice.} the poore, may also send to the House of correction, or common Gaole, such as will not imploy themselves in worke, being thereunto appointed by the Overseers, according to the Statute 21. Jac. cap. 28.

43. Eliz. 2.
F. 2.

Two (or more) Justices of Peace, whereof one to be of the ^{Quorum}, ^{Two Justices.} dwelling in or neere the Parish or division, &c. shall yeerely within one moneth after Easter, under their hands and seales, appoint foure, three, or two substantiall Housholders in every Parish, to be Overseers of the poore within the same Parish, who shall joyne with the Church-wardens therein. 21. Jac. cap. 28.

The Justices of Peace which have the appointing of these Overseers, must therein be carefull to chuse such men as in every Town are fittest: *sc.* substantiall persons, having competencie of wealth, wisdom, and a good conscience. And indeed, this name and office of Overseers, may beseme the best, and not the meanest men (it being a name and office of great antiquitie and excellency, as you may see 1 Cr. 23. 4. Acts 20. 28. & Acts 6. 3, 5.) And though the persons are dignified according to the singularity of the subject; yet this is not the least office to bee called Overseers of the poore. For as God himselfe hath a speciall respect to the miseries of the poore; so they be like God which provide for the necessities of the poore.

These Overseers and Church-wardens (or the greater part of them) ^{The Overseers duties,} with the consent of two or more such Justices, shall take order from time to time, for setting their poore on worke, putting out Apprentices, and releiving their impotent, as followeth:

F. 2. 5.

1. First, for setting to worke the children of all such, whose Parents ^{Apprentices.} shall not by the greater part of the said Overseers bee thought able to keep and maintaine their children; which children they, or the greater part of them, by the assent of two such Justices, may also put out to bee Apprentices, *sc.* the men children till their age of 24, and the women children till their age of 21. yeeres, or the time of their marriage.

And all poore children so bound Apprentices, may be taken and kept as Apprentices by their Masters, any former Statute to the contrary notwithstanding. See 1. Jac. cap. 25. & 21. Jac. 28. & 3. Car. 4. but such binding must bee by Indenture. See *antea tit. Labourers, Cromp. 184. b.* And see the forme of such an Indenture, *hic postea, cap. 128.*

2. For setting to worke all such persons (married or unmarried) as, ^{Able persons} having no meanes to maintaine them, use no ordinary and daily trade of life, to get their living by.

Such also as can get no worke, are by the Overseers to be set on work. And any one Justice of Peace may send to the House of correction, or Common Gaole, such as shall not imploy themselves to worke, being appointed thereto by the Church-wardens and Overseers of the poore of the Parish. 43. Eliz. cap. 2.

Now the placing of such Apprentices, and the setting and holding the poore

poore to work, is the more proper and true duty of Overseers: for otherwise their bare gathering, or raising of a stocke, is to little purpose.

And note, that the Church-wardens & Overseers of the poore, may by & with the consent of two or moe Iustices of Peace (whereof one to be of the *Quorum*) &c. set up, use, and occupie any Trade, Mystery, or Occupation, only for the setting on work, & better releefe of the poore of the Parish, Town, or place, where they are Overseers, &c. 3. *Caroli, cap. 4.*

Impotent.

3. For releiving such poore amongst them as are poore and impotent or not able to work.

But this releiving of poore, and impotent persons must be such, as that they neither be forced to beg, or steale; nor so little as that it may bee a lingring death to them.

And to these purposes the said Overseers are enabled to raise weekly, or otherwise (by taxation of every inhabitant, Parson, Vicar, & other, & of every Occupier of lands, houses, tythes, mines, or saleable underwoods (proportioning them to an annuall benefit, &c.) in the same Parish, such competent summes of money as they shall think fit, therewith to provide a convenient stock of some ware or stuffe, to set the poore on work, and also competent summes of money towards the necessary releefe of their lame, impotent, old, blinde, & other poore not able to work: and for the putting out of such children (as aforesaid) to be Apprentices.

The office then of these Overseers consisteth principally in two things,

1. In taxing contributions of money for the releefe of the poore.
2. In the disposing thereof according to Law and good discretion.

And in these taxations there must consideration be had, first to equality, and then to Estates.

Equalitie, that men be equally rated with their neighbours, and according to an equall proportion.

Estates, that men be rated according to their estates of goods known, or according to their known yeerely value of their lands, Farmes, or occupyings; and not by estimation, supposition, or report. Also herein the charge of family, retinue, and countenance, is in some measure to be regarded: for if one valued at 500. li. in goods hath but himselfe and his wife, and another estimated at 1000. li. hath wife and many children, &c. the first man by reason is to be rated as much as the other: And so of lands: *Tamen quare* what the Law is in such cases.

The causes of these } To set the poore on work by a stock, &c.
taxations is three } To releev the impotent, } by money.
 } To put forth Apprentices, }

And this last, *sc.* the putting forth and taking of Apprentices, may well be termed a speciall work, and Seminarie of mercie.

But in putting forth of these Apprentices, there must be regard had, to the Master, the childe, and the parents.

The Master, *sc.* his ability & honesty: otherwise by some device, or hard intreatie, they may provoke their Apprentices to depart, or run away.

Secondly, his trade or facultie, lest the Apprentice consume his time without learning any thing.

To these two, the Iustices of Peace must have an eye:

The

The childe, *ſc.* to put them out timely, and while they are young and tractable (ſo as they be above the age of ſeven yeeres) otherwiſe by reaſon of their idle and baſe educations, they will hardly keep their ſervice, or imploy themſelves to work.

The parents, *ſc.* to take away ſuch as are brought up to live idly and looſely, or elſe ſuch as are a burthen and charge to their Parents.

Againe, concerning the Maſters; all perſons of ability, are compellable to take Apprentices, according to this Statute; yea if they bee of ability, though they have but a houſe or ſleeping place in the towne, they are chargeable.

And Clergy men are not herein exempted, but may have Apprentices put to them; and this was the opinion of all the Judges, upon two ſeverall references to them lately made from the Kings Majestie (as I have been credibly informed.) Or at leaſt they are chargeable to contribute to the putting out of Apprentices: See the words of the Statute of 43. *Eliz. cap. 2. hic antea.*

Note alſo, that as this Statute enableth the Church wardens and Overſeers (with the conſent of two Juſtices of Peace) to put out Apprentices, ſo it doth enable them to place thoſe Apprentices with Maſters; for without Maſters, there can be no Apprentices. And the ſaid Juſtices may compell all ſuch as be of ability, to take ſuch Apprentices (according to their diſcretion) and if any ſuch Maſter ſhall reſuſe to take ſuch Apprentice, ſo to him appointed, the ſaid Juſtices may binde ſuch Maſter over to the next generall Gaole deliverie, there to anſwer ſuch default; And this was the direction of Sir *Henry Montague* Knight, chiefe Juſtice of the Kings Bench, at Cambridge Aſſiſes, *Anno Dom. 1618.* wherewithall agreed Sir *Nicholas Hyde*, and Sir *Francis Harvie*, Iudges of Aſſiſe at Cambridge Summer Aſſiſes, *Anno 1627.*

Alſo the Statute of 43. *Eliz. 2.* ſeemeth to warrant as much, the words of which Statute to this purpoſe are thus; Bee it further enacted, that it ſhall be lawfull for the Church-wardens and Overſeers, or the greater part of them (by the aſſent of two Juſtices of Peace) to binde any ſuch children to be Apprentices, where they ſhal ſee conveniēt. *Plus hic antea.*

Or elſe the ſaid Church-wardens and Overſeers (with the conſent of the ſaid Juſtices) as it ſeemeth, may impoſe upon ſuch Maſter (reſuſing to take ſuch Apprentice) a competent ſumme of mony, for the putting out of ſuch an Apprentice elſewhere. And upon the Maſters reſuſall to pay ſuch mony, two ſuch Juſtices may take their Warrant to levie the ſame by diſtreſſe, and ſale of the offenders goods, &c. See *Poulton 2. 4.*

Or the reſuſers to take Apprentices, may bee preſented, and indicted for the ſame, upon the Statute of 43. *Eliz.* at the Aſſiſes, or Sessions of the Peace, as it ſeemeth.

An Apprentice put to a man in regard of a farme, when his Leaſe expireth, his Apprentice muſt goe ſtill with the farme, if the firſt Maſter will: Otherwiſe where the Apprentice is put to a man in regard of his ability, or for other reſpect.

If the Parents of poore children ſhall reſuſe to ſuffer their children to be put forth (without good cauſe ſhewed) ſuch parents alſo may be bound
over

over by the Justices, to answer their said default: And if the Apprentices shall refuse, the Justices may send them to the house of correction, *quousq; &c.*

Note that if the Master shall put his Apprentice into apparrell, it is a gift in Law, and he cannot after take it away, though he should part with his Apprentice, &c. *Br. Trns. 93.*

An Apprentice which runneth from his Master, or shall be otherwise disordered, may be sent to the house of correction, by any Justice of Peace: Or else by order from the Sessions. See *hic cap. 31.*

*The Over-
seers ac-
count.*

Two such Justices shall take the account of such Overseers, at the end of their yeere, and of the Church-wardens, in every of these particulars following.

1. Of all sums of money by them received, or rated, and not received.
2. Of all such stock of ware or stuffe, as they, or any of the poore have in their hands.

3. What Apprentices they have put out & bound, according to the Stat.

4. What poore they have set to work, or releevd.

5. Whether they have suffered any of their poore to wander and beg out of their Town, or in the High-ways, or in their Town without their direction. See for this 39. *El. 3. & 4. & Lambt. 206. Resol. 15.*

6. Whether they have monethly met to consider of these things.

7. Whether they have assessed the Inhabitants, and Occupiers of lands, &c. in their Parish, *sc.* all such as are of abilitie, and with indifferencie. *Lambt. 206. Ibid.*

8. Whether they have endeavoured to levy & gather such assessments.

9. Whether they have been otherwise negligent in their office: within which words also, there seemeth to lye included, if they shall neglect to execute the Justices Warrants to them, or any of them directed, for the levying of any forfeiture according to this Statute. See *P. 2. & 12.*

*Overseers
defaults.*

Now if the Church-wardens, or either of them, or any of the Overseers, shall refuse to make and yeeld a true and perfect account to the said Justices, of all such summes of money, and of all such stocke, as aforesaid; any two such Justices may commit them to the common Gaole, there to remaine without baile, till they have made a true account, and satisfied and paid (to the new Overseers) so much of the said summe and stock, as upon the said account shall be remaining in his (or their) hands, &c. And if they make a false accompt, they may be bound over to the Assises, or Sessions, and there an Indictment may be preferred against them. *P. 241.*

Also if any of the Church-wardens, or Overseers, shall refuse, or deny to pay and deliver over to the new Overseers, the arerages (summes of money, or stock) which shall be in their hands, and due and behinde upon their account to be made as aforesaid; any two such Justices of peace may make their Warrant, to the present or subsequent Church-wardens and Overseers, or any of them, to levie the same by distresse, and sale of such distresse goods, rendering to the parties the overplus; and in defect of such distresse, any two such Justices of Peace may commit him or them to the common Gaole, there to remaine without baile, untill payment or delivery of the said summe, arerages and stock be made. *Ibid.*

If any such stock shall be in the hands of any the poore to work, and such

such poore shall refuse to deliver the same, it seemeth any two such Justices may make the like Warrant to levie the same by distresse, and in defect thereof may commit such offenders, as aforesaid.

And as for other the negligences of the Church-wardens & Overseers in their office, or in the execution of the orders aforesaid, every of the making default, shall forfeit for every such default xx. s. (but it seemeth such default must be proved either by the offenders confession, or by examination of witnesses) which forfeitures shall bee levied (by the new Church-wardens & Overseers, or one of them) by Warrant from any two such Justices of P., by distresse and sale of the offenders goods, &c. or in defect of such distresse, it shall be lawfull for any two such Justices of P. to commit the offender to the common Gaole, there to remaine without baile, till the said forfeitures shall be paid: And the said forfeitures be employed to the use of the poore of the same Parish.

Two such Justices of Peace are to allow the cause, or excuse of such Overseers, as shall not meet every moneth, to consider of the premisses, or as shal be otherwise negligent in their office, *Lamb. edit. 1614. pag. 360.*

Two such Justices may make their Warrant (as well to the present as subsequent Overseers and Church-wardens, or to any of them) to levie all such summes of money, and all arerages; (of every one that shall refuse to contribute according as they shall be assessed) by distresse and sale of the offenders goods (rendring to the party the overplus:) And in defect of such distresse, such two Justices may commit him or them to the common Gaole, there to remaine without baile, til payment be made of the said summe and arerages.

If the said Justices doe perceive, that any Parish is not able to releev their poore, then any two such Justices may tax & assesse any other persons within the Hundred (where the said Parish is) to pay such summes of money to the Overseers of the said poore Parish, for the said purposes, as the said Justices shall think fit, according to the intent of this Law.

He that shall bring any poore to any Town, which are burthen some to the Town, may be raised in his rates towards the releefe of the poore of that Parish. *Sir Nicholas Hyde.*

Yea Landlords taking into their houses poore persons (out of the parish) like to burthen the Parish, if the Landlord will not secure the parish, &c. Then may he be charged towards the releefe of the poore of that parish to the value of his rent reserved; or according to the charge they so bring into the parish.

If any persons finde themselves grieved with any tax, or other act done by the Overseers, or by the said Justices of Peace, they are to be releevd at the Quarter Sessions.

Head Officers of Cities and Corporate Townes (being Justices of Peace) have the same authoritie within their limits, as herein is limited to Justices of Peace of the County, &c. And no other Justices of Peace are to enter or meddle there.

If any Parish shall extend into two Counties, or part thereof to lie in any City or Corporate Town where they have Justices, Then the Justices of every County, &c. shall intermeddle only within their owne

*Refusers to
pay their
rates.*

*Corporate
Townes.*

limits: And every of them respectively within their limits, are to execute this Law concerning the nomination of Overseers, binding of Apprentices, giving Warrants to levie taxations, taking account of Overseers, & committing such as refuse to account, or to pay their arrerages: And yet the said overseers shal, without dividing themselves, execute their office in all places within the said parish, but shall give up several accounts, &c.

The Father, and Grand-father, and Mother, and Grand-mother, and the Children, and Grand-children of every poore impotent person, or other poore person not able to work, being of sufficient ability, shall relieve such poore persons in such manner as the Justices of Peace (of that Countie where such sufficient person dwelleth) at their generall Quarter Sessions shall assesse; upon paine that every one failing therein, to forfeit twentie shillings for every moneth: the said forfeiture to bee levied by the Church-wardens and Overseers, or one of them, by Warrant from any two such Justices of Peace (the one being of the *Quorum*) within their limits, by distresse and sale, as aforesaid: and in defect of distresse, any two such Justices may commit the offender to prison, there to remaine without baile, till the said forfeiture be paid. And the same forfeiture shall be employed to the use of the poore of the same parish.

Now for the better furtherance of this so needfull & charitable a service, and for the better helpe as well of the Justices of Peace, as of the Overseers, &c. I thought it not amisse to set down here certaine resolutions and advices of the Judges (as I finde them in *M. Lambard*) together with certaine other observations to this purpose.

If there be but one Church-warden in the parish, he sufficeth with the other Overseers.

If the parents be able to work, and may have work, they are to finde their children by their labour, & not the parish: But if they be over-burthened with children, it shall be a very good way to procure some of them to be placed Apprentices, according to the Statute. And such Apprentices would be put out to Husbandry, and hufwiverie.

Young children, whose parents are dead, are to be set on work, releevd, or maintained, at the charge of the Towne where they were dwelling at the time of the death of their parents, and are not to bee sent to their place of birth, &c. For if the parents were not Rogues, wee may not make the children rogues, except they wander abroad and beg. This was the direction of *Flemming*, chiefe Justice, in a case betweene *Weston* and *Cowledge*. *An. 11. Jac. Regis.*

If any (not being Rogues) shall travell with their children thorow a Towne, and the father or mother die, or run away, that Towne is not bound to keep their children, nor to send them away, but only in charity, except they become wandring beggers.

A travelling woman, having a small childe sucking upon her, is apprehended for Felonie, and sent to the Gaole, and is after arraigned and hanged, this childe is to be sent to the place of its birth, if it can bee knowne, otherwise it must be sent to the Towne where the mother was apprehended; for that that Towne ought not to have sent the childe to the Gaole (being no Malefactor) and so was it delivered by Sir *Nicholas Hyde*,

Hyde, at Cambridge Lent Assises, Anno 3. Caroli Regis.

Refol. 10.

Such persons as be of any Parish, and have able bodies to worke, if they refuse to worke at such wages as is taxed, or commonly given in those parts, are to be sent to the House of Correctiō, & not to their place of birth, or last dwelling by the space of a yeere. But if they have any lawfull meanes to live by, though they be of able bodies, & refuse to work, yet are they not to be sent to the House of Correction.

Refol. 15.
39. Eliz. 3.

None may be suffered to take releefe at any mans doore, though within the same Parish, unlesse it be by the order of the Overseers: neither may any be suffered to beg by the highwayes, though in their own parish.

Refol. 9.

No man is to be put out of the Town where he dwelleth, nor to be sent to their place of birth (or last habitation) but a vagrant Rogue; Nor to be found by the Towne, except the party be impotent; but ought to set themselves to labour, if they be able, and can get worke: if they cannot get work, the Overseers must set them to labour.

And so of them that have or shall have houses, when their estates be expired: And servants, whose times of service are ended, though they cannot get houses: For they must provide themselves houses anew, if they be not impotent. *Ibidem.*

So that such persons, whose estates of their houses be expired, and servants when their service is ended, they shal not be put out of the Towns where they so last dwelt or served: Neither are they to be sent from thence to their place of birth or last habitation, but are to be settled there to work, being able of body, or being impotent, are to be there releaved: And yet if such persons shall wander abroad begging, out of that Parish, then they may be sent as Vagabonds (from the place where they shall be taken wandring, or begging) to their place of birth, &c.

But for the placing and settling of these poore people (who now for want of charity, are much sent and tossed up and down from Towne to Town, and from Countrey to Countrey) it hath been holden by some, that it is in the power of the next Justice of Peace to give order therein: And that upon Appeale from him, the Iustices of Peace at the Quarter Sessions may fully take order therein: and that their order made in Sessions will not easily be avoided.

But *S. Fr: Harvey* at Summer Assises at Cambr: *An. 1629.* did deliver it, that the Just: of P. (especially out of their Sessions) were not to meddle either with the removing, or settling of any poore, but only of Rogues.

If a man hireth an house in A. and being there with his wife and children, he afterwards shall binde himselfe as a servant with one dwelling in B. yet are not his wife and children to be sent to B. or placed there, but are to remaine still at A. where they were once settled. Otherwise, if the husband hath hired an house in B.

A Maid-servant gotten with child at A. by her fellow-servant (or by another young man of the same Town,) after both their times of service expireth, and they marie, and then the young man is retained at B. then the woman is delivered of her childe, she with her childe are to be sent to the father at B. and there they are to be settled.

Note (by an old Law) he which commeth guest-wife to an house, and there

there lyeth the third night, is called an *Hoghenhine* (or *Agenhine*;) and after the third night, he is accompted one of his family in whose house he so lyeth : and if he offend the Kings Peace, his Oast must be answerable for him. *Termes de Ley.*

Such as shal remove or put any out of their Parish, that be not to be put out, this is against the Statute concerning the releefe of the poore, & finable; And if any have been so sent, they may be sent back againe. Refal. 11

Now this fine seemeth to be by force of the Statute 39. *Eliz. cap. 4.* P. Vag. 1. 13 and to amount to five pounds. And is to be levied by distresse and sale of the offenders goods, upon a Warrant under the hands and seales of any two Justices of peace, either upon the confession of the offenders, or else upon the testimony of two sufficient witnesses.

All such persons as in any wise shall disturbe the execution of this Law, concerning Rogues, or the releefe, or settling of poore impotent persons, shall forfeit five pounds; and any two Justices of Peace may binde such offenders to their good behaviour; and may also by Warrant under their hands and seales, cause the said five pounds to bee levied by distresse and sale of the offenders goods, as aforesaid : which forfeiture the said two Justices also, by their discretion, may order, to be employed to the releefe of the poore where the offence shall be committed, or to the maintenance of the house of correction, &c. *quare* for this forfeiture, for that the stat. 39. *El. cap. 3.* made for the releefe of the poore, is expired. 39. Eliz. 4.
P. Vag. 1. 13

Next, here is consideration to bee had of three sorts or degrees of poore.

1 Poore by impotency and defect.

1. The aged and decrepit, that are past labour.
2. The infant, fatherlesse and motherlesse, and not able to work.
3. The person naturally disabled, either in wit, or member, as an Ideot, Lunatick, Blinde, Lame, &c. not being able to work.
4. The person visited with grievous disease, or sicknesse, though casually, yet thereby for the time being impotent.

All these (being impotent & not able to work) are to be found & provided for by the Overseers, of necessary releefe; and are to have allowances proportionable, & according to the continuance & measure of their maladies, and needs; and of these it may be said, *Si non pavisti, occidisti.*

2 Poore by casualty.

1. The person casually disabled, or maimed in his body, as the Souldier, or Labourer, &c. maimed in their lawfull callings.
2. The housholder decayed by casualty of fire, water, robbery, suretiship, &c.
3. The poore man overcharged with children.

All these last (and such others) having ability and strength of bodie, but not sufficient meanes to maintaine themselves, are to be holden, or set to work by the Overseers, and being not able to live by their work, are in charity further to be releevd in some reasonable proportion, according to their severall wants and necessities.

3. Thriftlesse

3 Thriftlesse poore.

1. The riotous and prodigall person, that consumeth all with play, or drinking, &c.
2. The dissolute person, as the Strumpet, Pilferer, &c.
3. The slothfull person, that refuseth to work.
4. All such as wilfully spoile or imbecill their work, &c.
5. The Vagabond that will abide in no service or place.

For all these last, the house of correction is fittest: And there such persons being able in body, are to be compelled to labour; that by labour and punishment of their bodies, their froward natures may be bridled, their evill minds bettered, & others by their example terrified. Also the rule of the Apostle is, That such as would not work, should not eat, 2 *Thes.* 3. 10.

And all such persons sent to the House of correction, must there live by their owne labour and work, without charging the Towne, or Countrey, for any allowance, see to that purpose the Statute 7. *Jac.* cap. 4.

But for the Overseers to suffer such persons, (or any other persons, which can live of their labours or otherwise) to bee chargeable to the Town, or to releev such, were a meanes to nourish them in their lewdnesse, or idlenesse, which take it; and to rob others of releefe that want it, to wrong those of their money that pay it, and to condemne them of oversight which dispose it.

And yet if any of these last happen to prove impotent, as also in cases of manifest extremity, it seemeth they are to be releevd by the Town: But I leave that to better consideration.

Where any summes of money (at any time within three years before the making of the Statute 7. *Jac.* cap. 3.) have beene given, or hereafter shall be given to bee continually employed for the binding out of Apprentices unto Trades & Occupations, the Parson, or Vicar, Constables, Church-wardens, and Overseers for the Poore, in Townes not incorporate, or the most part of them, are by the Statute appointed to have the disposing of such stocks or summes of money: which persons shall once every yeere, within one moneth after Easter day, make a true and perfect account before two or moe Iustices of Peace, (dwelling in or next to every the said Townes or Parishes) of all such summes as they have so employed, and of all bonds taken for the payment thereof, and of all summes remaining in their hands and not employed.

Two Justices of Peace may licence poore diseased persons to travell to the baths for remedy of their griefes; so as they be provided of necessary releefe (*sc.* with money in their purses, &c.) for their travell, and beg nor. See hereof *postea tit. Rogues. cap. 47.* *Licensed to travell.*

The Justice of Peace dwelling neere where any person suffering shipwracke shall land, or where any poore Souldier or Mariner shall land, may, and ought to make a testimoniall under his hand to such persons, of their landing, &c. and thereby to licence them to passe the next direct way to their place of birth or dwelling, &c. limiting them therein a convenient time for their passage. See the title *Rogues.*

But it seemeth no Justice or Iustices of Peace may or can in any case licence any poore man to wander or beg at all; nor may licence any poore

to travell, but onely in these former three last cases, See the title *Rogues*.

Here I thought it not amisse shortly againe to observe such offences, as the Justices of Peace out of their Sessions are to deale withall, & where the forfeitures (or part thereof) are given by the Statute to the use of the poore of the Parish where the offences be committed.

Alehouses. Alehouse-keepers, and In-keepers, &c. suffering Townesmen, or any other person, to continue drinking in their houses, the forfeitures shall be to the use of the poore of that Parish, &c. See before *tit. Ale-houses*, & 21. *lac. cap. 7.* So of Alehouse-keepers without licence. *Ibidem.*

So of Alehouse-keepers, &c. selling lesse then one quart of their best Beere or Ale for 1. d. and two quarts of their small for 1. d. See *ibid.*

So of Townesmen, or others, tippling in Alehouses, &c. See *ibid.* 4. *lac.*

So of Constables, &c. not levying the forfeitures of the offenders aforesaid, or not whipping the offenders, upon the Iustices Warrant. See *ibid.* 1. *lac.*

So of persons convinced of drunkenesse. *Ibid.*

Cloth. So the mony made upon sale of Teinters, or other like Engines (found by the Justices of Peace, or by the Overseers of cloth.) See *tit. Cloth, antea.*

All penalties and forfeitures for want of length, bredth, and weight of Cloth, limited by any former Act now in force, or by this present Act, shall be distributed into three equall parts, whereof two parts shall bee unto the poore of the Parish where the said Cloth shall be made, to be levied by Warrant made by two Justices of P. (directed to the Churchwardens and Overseers of the poore of such Parish) by way of distresse, and sale of the offenders goods, &c. 21. *lac. cap. 18.*

Fish. The moitie of the forfeiture for destroying the spawne of sea-fish. See *tit. Fish, antea.*

The flesh in Lent time, found in any victualling house (upon the Iustices search,) *Vide tit. Fish-dayes.*

Fesants. Taking, or destroying of any Fesant, Partridge, or other Fowle. *Vide*
Partridges. *tit. Partridges.*

Taking, or destroying the Egges of any Fesant, Partridge, or Swan. See *ibidem.*

Meeting of people out of their owne Parishes, on the Sunday, for any sport or pastimes whatsoever. *Vide tit. Games.*

Using any unlawfull games or pastimes within their owne Parish, by any person upon the Sunday. *Vide ibidem.*

Taking, destroying, tracing, or coursing in the snow, of any Hare. See *ib.*

Keeping of any Greyhound, setting Dog, or Ner, to take Partridges or Fesants, contrary to the Statute. See *ibidem.*

Selling of any Deere, Hare, Partridge, or Fesant: See *ibidem*, & *vide Stat. 1. lac. cap. 27.*

Hawking between the first day of July, and the last of August. *Vide titulo Partridges.*

Poore. Overseers of the poore, negligent in the execution of their office. See before in this title, *Poore.*

Parents, or children, failing to relieve each other, as shall be ordered at the Sessions. See *ibidem.*

Such as shall put out any of their Parish, that be not to be put out. See *ibid.* Such

Such as shall any wayes disturbe the releefe, or setting of the poore.
See *ibidem*.

Persons absenting themselves from Church upon any Sunday. *Vide Recusants; titulo Recusants. 3. Jac. cap. 4.*

Persons disturbing the execution of the Law made 39. Eliz. concer-
ning the punishing, or conveying of Rogues. *Vide tit. Rogues.*

Sending Rogues by a generall Pasport. See *ibid. Resol. 13.*

Constables not receiving a Rogue, to convey him according to the
Statute. See *ibidem*.

If a Rogue shall not be delivered to the next Constable, to be convey-
ed still forward, &c. See *ibidem*.

If a Rogue be sent to the Towne whereto he ought, and be there re-
fused. See *ibid. Resol. 12.*

The Minister not keeping a Register-book, and therein entring eve-
ry Testimoniall made for the conveying of Rogues punished in his Pa-
rish. See *ibidem*.

Constables not doing their best endeavour for the apprehending, pu-
nishing, and conveying of all Rogues. See *ibidem*.

The Constable which shall not punish a Rogue, &c. brought to him,
shall forfeit 20. s.

Every person that shall not apprehend Rogues resorting to his house;
See *ibidem*.

Every person bringing into this Realme any Rogue. See *ibidem*.

Prophane swearing and cursing. See *tit. Swearing.*

Carriers or Drovers travelling upon the Sunday.

And Butchers killing, or selling upon that day. *Hic cap. 49.*

Preachers. CAP. 41.

1 Mic. 1. c. 3.
P. 1. 1.

IF any person shall of his owne authority, willingly and of purpose, by
open act, maliciously disturbe any Preacher in the time of his Sermon,
or other Divine Service, or shal be aiding, procuring, or abetting thereto;
or shall rescue any such offender being apprehended, or shall disturbe the
arresting of any such offender; and that any of the said offenders shall be
brought before any Justice of Peace (within the County where the said
offence shall be committed) then every such Iustice of Peace (upon due
accusation thereupon made) shall forthwith commit every such offender
(so brought before him) to safe custody, by his discretion.

1 Mic.

Within six dayes (after accusation had of any of the said offences, and
after the committing of the said offender to safe custody by one Iustice
of the Peace) one other Justice of the Peace of that Shire must joyne
with the first Justice in the examination of the said offence; and if they
two upon their examination shall finde the party accused guilty (and
that by two sufficient witnesses, or by his owne confession) then shal they
commit him to the Gaole, there to remaine without baile, for three
months then next ensuing; and further to the next Quarter Sessions, &c.
But inquire, if all this Statute be not repealed by 1. Eliz. cap. 2. in ge-
nerall words at the latter end thereof. *Lambt. 199.* yet it seemeth not to
be repealed in this matter, *sc.* for disturbance of Preachers: for this Sta-
tute

Two Justices.

tute containeth divers severall matters, and so divers Statutes *Cromp.* 14.

And yet Sir *Nicholas Hyde*, at Burie, Lent Assises, *Ann.* 1629. delivered it (as I am credibly informed) that this Statute was wholly repealed, by the Statute made 1. *El. cap.* 2.

Prophecies. CAP. 42.

IT seemeth by the generall words of the Statute, that everie Justice of Peace may imprison (by the space of one yeere, without baile) such as advisedly shall publish any false Prophecies (contrarie to the tenour of the Statute 5. *El.* 15.) to the intent thereby to make any rebellion, insurrection, or other disturbance within the Kings Dominions.

Prison. CAP. 43.

ANy Justice of Peace, having sent or committed to the Gaole, an offender (for any offence or misdemeanour) if the offender (having meanes or ability thereto) shall refuse to beare and defray the charges of such as shall convey and guard him or them to such Gaole, or shall not at the time of their commitment, pay or beare the same, Then the said Justice may give his Warrant under his hand and seale (to the Constable of the Hundred, or Constable of the Towne, where such offender shall be dwelling, or from whence he shall be committed, or where the said offender shall have any goods within that Countie or liberty) to sell so much of the offenders goods, as by the discretion of the said Justice will satisfie such charges, &c. the appraisement to be made by foure Inhabitants of the Parish where such goods be, yeelding to the party the overplus of the money: And where the offender hath no such goods, then the charge thereof must be borne by the Towne where the offender was taken. And the taxation made on the Town for that purpose, must be allowed under the hand of one Justice of Peace: And by like Warrant from such Justice, the goods of the person refusing to pay such taxation, may be distrained and sold.

Purveyors. CAP. 44.

IF any person within five miles of Cambridge, or Oxford, shall refuse reasonably to serve the provision of the said Universities, then may the Vice-Chancellor, & any two Justices of Peace within the same University, Town, or County, under their hands & seales, allow any the K. Purveyors, to provide any Corn, or victuall of any such person, to the use of the K. as they lawfully may in other places, without the said Precinct.

The Vice-Chancellor (or his Commissary for the time being) in either of the Universities, with any two Justices of Peace of the same County, may by the oaths of twelve men, enquire of, and punish the offences of Purveyors, Takers, Badgers, Loaders, Poulters, or other ministers for the Kings Majestie, and of all other common Poulters, &c. committed contrary to the Statutes for the priviledges of the Universities, &c. *sc.* in taking or bargaining for any victuall or graine, within Cambridge or Oxford, or within five miles of either of them; or in taking or bargaining for any victuall or graine bought within the said five miles, by

by any common minister of any Colledge or Hall, to be spent there, without the licence of the Chancellor, or Vice-Chancellor in writing, under the seale of their office; or not according to such licence: and every such offender shall forfeit the quadruple value of such graine or victuall, so taken or bargained for, and shall suffer imprisonment three moneths without baile; which punishments the said Vice-Chancellor, &c. and two Iustices of Peace may see duly executed accordingly.

33. H. 6. c. 14. If any buyer, or other Officer of any Lord, or other person, (but only for the King and Queen, and their houses) do take any victuall, corn, hay, cariages, or any other thing whatsoever, of any of the Kings people, in any wise against their wil (without lawfull bargain between the said buyer and the seller made) then upon request made to the Maior, Sheriffe, Bailiffe, Constable, Officer, or other the Kings Ministers (under which word *Ministers, the Iustices of Peace be also comprehended) of the Cities, Boroughs, Counties, or places where such taking shall happen to be, the said Maior, Sheriffe, Minister, and Justice of Peace, shall presently take and arrest such buyer and officer so offending, and them shall send to the Kings next prison, there to remaine without baile, untill they have delivered the said goods so taken, or the value thereof.

See more of Purveyors, *tit. Felonies by Statute.*

Recusants. CAP. 45.

37. Eliz. 1. P. 1. **I**F any person above sixteene yeeres of age, doe forbear to come to Church by the space of twelve moneths, contrarie to the Statute 1. *El.*
2. Any Justice of Peace of the County where such an offender shall dwell or be, may make thereof Certificate into the Kings Bench, to the end such offenders may there be bound to their good behaviour.

39. Eliz. 1. P. 19. Any one Justice of Peace may require the submission and declaration of conformitie to his Majesties Lawes, of Recusants and Sectaries, within three moneths after their conviction, &c. And in default of such submission, may require them to abjure this Realme: which Abjuration notwithstanding, shall be in open Sessions. 21. *Iac. cap. 18.*

For the form of such submission, see the Stat. of 35. *El. c. 1. P. Recusants. 20*

No woman covert, or married woman, shall bee forced to abjure, by vertue of this Statute.

Where one Justice of Peace may require a Popish Recusant to take the Oath of Allegiance: See *postea* in this title.

39. Eliz. 1. P. 19. c. 7. Any Justice of Peace within the County, in which any Jesuit, or other Popish Priest, or other Ecclesiasticall person shall arrive or land, within three dayes after their landing, may take their submission, oath, & acknowledgement, touching their obedience to the K. Majestie, & his Laws provided in cases of Religion: but if it be any other subject, who is no Priest &c. & yet brought up in any Seminary, they must make their submission, and take the Oath, &c. before two Iustices, &c. See more in this title.

39. Eliz. 1. P. 19. c. 10. Every subject knowing any Jesuit, or Popish priest, to be within the Kings Dominions, ought to discover the same to some Justice of Peace, or other higher Officer, within twelve dayes, &c. And such Justice of Peace ought within eight and twenty dayes after such discovery made

to him, to give information thereof to one of the Kings Privy Councill, &c. upon paine of two hundred marks. And upon such information given by the Justice of Peace, he shall have redelivered to him a note in writing subscribed by such Privy Councillour, &c. (with his owne hand) testifying that such information was made unto him.

If any person to whom any *Agnus Dei, Crosse, Picture, Beads*, or such superstitious things shall be delivered or offered, doe disclose such deliverer or offerer to any Justice of Peace, &c. That Justice of Peace within fourteene dayes, must declare the same to one of the Kings Privy Councill, or else he shall incur the danger of a *Præmunire*. 11. Eliz. 2.
P. Roms 61

If there be any subject of this Realme, be hee Popish Recusant, (convict, or not convict) or other person, that shall not repaire every Sunday to some Church (both to Morning and Evening Prayers) and then and there to abide orderly during the time of prayer, preaching, or other service of God there used, according to the statute made 1. *Eliz. cap. 2* Then any one Justice of Peace of that limit where the said party shall dwell, upon prooffe to him made of such default (by confession of the party, or oath of witnesse) may within one moneth next after such default, call the party before him, and if he shall not prove sufficient cause of his absence (to the satisfaction of the said Justice) the said Justice of Peace may give Warrant under his hand and seale, to the Church-wardens, to levie twelve pence for every such default, by distresse and sale of the offenders goods, &c. And in default of such distresse, the said Justice of Peace may commit such offender to prison, untill payment bee made of the said summe so forfeited; the same to be employed to the use of the poore. Also this statute seemeth to extend to women that be married: see *Co. 11. 61. b.* See also the title, *Riots hic cap. 88.* Co. 11. 61. b.
3. Jac. 4.
P. 504.
P. Sacra.
ments 51

And so note, that this penalty of twelve pence, and of xx. li. a moneth, shall be both of them paid by a Recusant convict. *Co. 11. fol. 63. b.*

Also this repairing to Church every Sunday, must be as well to Evening Prayers as to Morning Prayers, for it ought to be an entire day, and an entire service; and so Sir *Richard Hutton* (one of the Judges of the Court of Common Plees) did deliver it in his charge at Cambridge Lent Assises, *Anno 1. Caroli Regis*. And therewith agreed Sir *Robert Bartlet* at Summer Assises, *Anno 9. Caroli Regis*.

The party that doth first discover to any Justice of Peace, any Recusant, or other person entertaining or relieving any Jesuit, Seminary, or Popish priest, or any Masse to have been said, and any of them that were present thereat, within three dayes after the offence, (& by reason of his discovery any of the offenders be taken & convicted) shall be freed from danger of the offence, if he be an offender therein, & have the third part of the forfeiture which shall be forfeited by such offence, 3. *Jac. cap. 4.* 3. Jac. 5.
P. 60.

Before some Justice of Peace of the county, liberty, or limit where the parents of a child sent beyond seas, without licence, did dwell, such child must take the oath of allegiance expressed, 3. *Jac. c. 4.* And they that were beyond seas before the making of this act, are to take the same oath within six months after their returne, before some Justice of Peace where such persons inhabit, before they can take the benefit of any gift, conveyance, P. 7. 271

veyance, devise, or discent, &c. of any lands or tenements, &c. 3. *Jac. cap. 5.*
 P. 61. Popish Recusants indicted or convicted, and all other persons which have not repaired to some usuall Church or Chappell, and there heard divine service, by the space of three months last past, dwelling, or which shall dwell in any County within ten miles of the City of London, shall depart from thence according to this Statute, and deliver up his or her name to the next Justice of peace in the same County, upon paine of forfeiture of 100. li. 3. *Jac. cap. 5.*

P. 63. Any one of the foure Justices of peace, which by this Statute may licence a confined Recusant to travell, may minister the oath, to be taken by such Recusant, that he hath truly informed them of the cause of his journey, and that he shall not make any causelesse stayes, 3. *Jac. cap. 5.*

3. *Jac. 4.*
 P. 75. After any warrant be granted out from the quarter Sessions, or from any foure Justices of peace there for the taking away of the armor of any Popish Recusant convicted; if any such Recusant having any such armour, gunpowder, or munition; or if any other person having any such armor, to the use of any such Recusant, shall refuse to declare unto the said Justices of peace, or any of them, what armor he or they have, or shall hinder or disturb the delivery thereof, to any of the said Justices, or to any other person authorized by their Warrant to take & seise the same, then every such offender shall be imprisoned, by Warrant of & from any two Justices of peace of such County, by the space of three moneths without baile.

3. *Jac. 4.*
 P. 75. Any two Just: of the P. (the one being of the *quorum*) may require any Popish Recusant, man or woman, of the age of 18. yeeres or above, which is convicted or indicted for Recusancie, or which hath not received the Communion twice the yeere past; or which travelleth the countrey, and is unknowne (and being examined upon oath, shall confesse, or not deny themselves to be Recusants, or not to have received the Communion twice the yeere past) to take the oath of Allegiance appointed by the Statute, 3. *Jac. cap. 4.* And if such person shall refuse to answer upon oath, such Justices of peace examining him as aforesaid; or to take the said oath of Allegiance, then the said two Justices shall commit the same person to the common Gaole, there to remaine without baile, untill the next Assises or quarter Sessions: But Noblemen and Noblewomen are excepted, as not to be dealt withall herein by the Justice of peace.

3. *Jac. 7.* Also any two Justices of peace may take the said oath of Allegiance of such persons as have charge of Castles, Fortresses, Block-houses, or Garrisons, and of all Captaines having charge of souldiers within this Realme: And upon refusall may commit the offender, being of the age of 18. yeeres, to the common Gaole, there to remaine without baile till the next Assises or quarter Sessions, 7. *Jac. 6.*

Also by the same Statute 7. *Jac. cap. 6.* any two Justices of peace, the one being of the *quorum*, may require any other person or persons, man or woman, be they Recusants or not, of the age of 18. yeeres or above (under the degree of a Baron or Baronesse) to take the said oath; and may commit them as aforesaid, upon their refusall.

1. *Jac. 6.* And by the said Stat. if any person whatsoever, of the age of 18. yeeres One Justice, (under the degree of a Baron) shall stand and bee presented, indicted,

or

or convicted, for not comming to Church, or receiving the communion, before the Ordinary, or any other having lawfull power to take such presentment or indictment; or if the Minister, pety constable, & Churchwardens, or any two of them, shall complain to any one Justice of Peace neere adjoyning, and the said Justice shall finde cause of suspicion, then that Justice or any one other Justice of Peace within whose commission or power such person shal be, upon notice thereof, shal require such person to take the said oath; & if any person shal refuse to take the said oath tendred to him, or her, as aforesaid, then such Justice or Justices shall commit such offender to the common Gaole, there to remaine without baile till the next Assises or quarter Sessions.

Two Justices.

The said two Justices of Peace shall certifie in writing (subscribed with their hands) at the next quarter Sessions, the names and place of abroad, of such persons as have so taken the said oath before them, by force of the Statute, 3. Jac. 4.

And it seemeth requisite, that the Justices or Justice of Peace, do make like certificate (at the next Assises or Quarter Sessions) of such persons as have taken the said oath before them, by force of the Statute, 7. Jac. 6.

Such persons as have been reconciled to the Pope, if they shall return into the Realme, and thereupon within six dayes next after their returne shall submit themselves to his Majestie and his Lawes, before any two Justices of Peace, joyntly or severally, of the County where they shall arrive, the said Justices may take such submission, and withall may take their oath to the Supremacie, and their oath of Allegiance, and the said oaths so taken, the said Justices shall certifie at the next Quarter Sessions upon paine of 40. li.

Any two Iustices of Peace of the County, where any of his Majesties subjects (not being a Iesuit, or other Popish Priest, &c.) brought up in any Seminary, shall arrive within six moneths next after Proclamation to be made in that behalf in the City of London under the great seale of England, may (within two dayes next after such returne) receive his submission to his Majesty & his Lawes, and take his oath to the Supremacy.

The Iustice or Justices of peace that shall receive or take any submission, or oath, as aforesaid (by force of the Statute of 27. El. cap. 2.) shall certifie the same into the Chancery, within three moneths after such submission, upon paine to forfeit one hundred pounds. 27. Eliz. cap. 2. P. Iesuits 11.

If any married woman (under the degree of a Baronesse) being lawfully convicted as a Popish Recusant, shall not within three months after such conviction, repaire to the Church, & receive the Communion, &c. Any two Iustices of P. (the one being of the *Quorum*) may commit her to prison, there to remaine without baile, untill she shall conform her self, &c.

Any two Iustices of P. from time to time, may search the houses and lodgings of every Popish Recusant convict, and of every person, whose wife is a popish Recusant convict, for Popish Books & Reliques of pope, &c. And they may presently deface & burn such Books & Reliques as they shall finde: yet if it be a Relique of any price, the same is to be defaced at the generall Sessions of the Peace, and to be restored to the owner.

35 Eliz. 2.
2. 11.

A convicted Popish Recusant of small abilitie (not having twentie Markes freehold *per annum*, or fortie pounds in goods, nor being a Feme covert) that shall not repaire to his place of usuall dwelling, or place of birth, &c. and there notifie himselfe to the Minister and Constables (according to the Statute of 35. *Eliz.*) Or shall afterwards remove above five miles from the same, if after he be apprehended, and shall not conforme himself within three moneths, in comming usuallly to the Church and in making such publique submission, as in the said Statute is appointed, being thereunto required, as hereunder is mentioned: Then any two Iustices of Peace may require such offender to abjure the Realme, and may assigne him the time and Haven, &c. And every such offender shall upon his corporall oath, before the said Iustices, abjure this Realme of England, and all other the Kings Dominions, for ever.

The Oath of the abjuration may be taken by the Justices of Peace, of Recusants, in this forme, or to this effect:

You shall sweare that you shall depart out of this Realm of England, and out of all other the Kings Majesties Dominions, and that you shall not returne hither, or come againe into any of his Majesties Dominions, but by the Licence of our said Sovereign Lord the King, or of his heires: so help you God. See *Stamf.* 119. *Vide Wilk.* 40.

And such Recusant thereupon shall depart out of this Realme, at such Haven and Port, and within such time as shall in that behalfe be assigned and appointed by the said Justices of Peace, unlesse hee bee letted and stayed by such lawfull meanes or cause, as the Common Lawes do allow in cases of abjuration for Felonie, &c. 35. *Eliz.* cap. 2.

If any such Recusant shall refuse to make such Abjuration; or after such Abjuration made, shall not goe to such Haven, and within such time as is so appointed him, and from thence depart out of this Realme, according to this Statute, or after such departure, shall returne or come againe into any his Majesties Realmes or Dominions, without his Majesties speciall Licence, in that behalfe first obtained; in every such case the person so offending shall be adjudged a Felon, *ibidem*.

The Justices of Peace before whom any such Abjuration shall bee made, shall cause the same to be presently entred of record before them, and shall certifie the same at the next generall Gaole deliverie to be holden in the same County. 35. *Eliz.* cap. 2. P. 31.

The Bishop of the Diocesse, or any one Justice of Peace, or the Minister of the Parish where such convicted Popish Recusant of small ability shall be, may require the submission of such Recusant, 35. *Eliz.* 2. P. 31.

The forme of such submission, see *ibid.* P. 24.

35 Eliz.
2. 11.

Recusants confined to five miles, may be licenced by any foure Justices of Peace, and the Bishop or Lieutenant, or any Deputy Lieutenant residing in the said Countie, under all their hands and seales, to travell about their necessary businesses out of the compasse of five miles. But such Licences must specifie the particular cause of the said Licence, and the time of their absence must therein be limited, and the party so licenced must first take his Oath before the said foure Justices, or any of them, that he hath truly informed them of the cause of his journey, and
that

Foure Ju-
stices.

that he shall not make any causelesse stayes. See the forme of such Licence, *hic postea*, tit. *Presidents*.

Riots, Routs, &c. CAP. 46.

One Justice.

ANy one Justice of Peace alone, may use all good meanes to prevent a Riot or Rout before it be done; and for to stay it whilest it is in doing, and in the doing may take and imprison the Riotors, or binde them to their good behaviour: but being once done, and committed, one Justice of Peace cannot make enquire thereof, nor aslesse any fine, nor award any Proceffe, nor otherwise meddle to punish it in the nature of a Riot or Rout, but onely as a Trespasse against the Peace, or upon the Statutes of Northampton, or of Forcible Entries: whereof see the title *Forcible Entrie*.

And yet if one Justice of Peace, sitting in a judiciall place (as in the Sessions) shall see a Riot, he may command them to bee arrested, and may make a Record thereof, and the offenders shall be concluded thereby: but if one Justice of Peace shall see a Riot in another place, and shall command them to be arrested, and shall make a Record thereof, the offenders shall not be concluded thereby, but may traverse it: And yet the Justice may record it, and certifie the same to the next Sessions, &c.

Cro. 41.
If a Justice of Peace will commit a man to ward, pretending untruly, that he did a Riot, where he did none, the party may have an action of Trespasse against him, *Fitz. Inst. 9. tamen vide Co. 8. fol. 121. a.* that the Record of a force made by a Justice of Peace is not Traversable, for that he doth it as a Judge: And so the Justices Record of a Riot, is not traversable. See *hic postea*. Also see *Br. Judges 2. & 10.* That an Action will not lie against a Justice or Judge of Record. *& 2. R. 3. 10. hic cap. 120. sc. pro re facta judicialiter.*

One Justice.

Every Justice of Peace (being of and in the Countie, and having notice of any Riot, Rout, or unlawfull Assembly) ought to have a care of the execution of the Statute made 13. H. 4. c. 7. (*viz.* that the Riotors, &c. be arrested, and removed,) for if that Statute be not executed in every part thereof, by some of the Justices, the two next Justices of Peace shall forfeit each of them 100.li. and every other Justice of Peace within that Countie, in whom there shall be any default, shall be finable in the Star-Chamber.

And therefore every Justice of Peace of the Countie, hearing of any Rout, or of any intention of a Riot (without making any precept, or tarrying for his fellow Justice, or for the Sheriffe) shall doe well to goe himsele (if hee bee able) with his servants, or other power of the Countie, if need bee, to the place where such persons bee so assembled, and to suppress them, and all such as he shall finde and see riotously assembled (and armed) to arrest them, and to force them to put in surety for the Peace, or for their good behaviour; and for refusing to give such suretie, or in default of suretie, to imprison them; and also hee may take away their weapons and armour, and seise and prise them for

for the King. *Vide tit. Armour, and Forcible Entrie.*

So that one Iustice of Peace seeing a Riot, may and ought to record it, and to attach the Riottors, and to commit them, or binde them over to the good behaviour; But hee may proceed no further therein. For he cannot fine them without an enquire, which enquire must be by a Iurie, and before two Iustices of Peace; And may be at any time within the moneth. Otherwise for omitting of attaching or arresting the offenders at the first, the Justice which saw the Riot is punishable: But the enquire by a Iurie must be within one month, *sub pena* 100. li. to the two next Justices, &c. See *hic postea*

14. H. 7. 10.
Br. Peace 7. And if the Iustice of Peace (being come to the place) shall not finde the Riottors yet come thither, hee may leave his servants there (with his Warrant in writing, or without Warrant, as it seemeth) to restrain them in their said enterprise, or else to arrest such offenders, when they shall come. if they shall offer to commit any Riot, or to break the Peace; and this for speedy remedy.

14. H. 7. 10.
Br. Peace 7. So if the Justice be sicke, and shall heare of a Riot, hee may send his servants, or other power of the Countie, if need be, (with his Warrant under his hand and seale, or without such Warrant, by word of mouth) to the place to repress it, or to arrest such offenders, and to bring them before him, to find sureties for the Peace: and all this he may doe without expecting the coming of any his fellow Iustices, or of the Sheriffe, or under Sheriffe, and this also for expedition.

P. 16. 17. Also one Iustice of Peace, by the Statutes made 1. M. cap. 12. and 1. El. 16. might have made Proclamation in the Kings name, That all persons riotously assembled, should depart to their habitations &c. The form of which Proclamation you may see in the same Statute, and in P. Riots, 27. But the said Statutes are now expired.

Also any one Justice of Peace (by the first *Assignavimus* in the Commission) may cause to be kept and put in execution, all other Statutes made for the repressing of Riots, force, and violence: but therein hee must deale only according to the forme and order in such Statutes prescribed.

13. H. 4. c. 7.
P. 2. 5. But the ordinary power of punishing of Riots belongeth unto two *Two Justices* Justices of Peace at least: and therefore the two next Justices of Peace *ces.* which dwell neereft in the Countie, where any Riot, Assembly, or Rout of people shall be against the Law, together with the Sheriffe or under-Sheriffe of the Countie, upon complaint or other notice of the Riot, shall doe execution of the Statute 13. H. 4. 7. (*sc.* of all and every part thereof respectively, as to them is appointed) every one of them, upon paine of 100. li. And in default of the two next Justices, the other Justices of Peace of and within the Countie (upon notice of such Riot) ought to doe execution thereof, every one upon danger to be fined in the Star-Chamber: but the penalty of 100. li. is only to be laid upon the two next Justices.

Crompt. 63.
Laub. 322.

See the Case of *Drayton Bassett*, *hic antea*, tit. *Forcible Entrie*: where certaine Justices of Peace which were not the next, nor did not dwell neereft to the place where the Riot was committed, and yet

were fined in the Star-Chamber, upon the stat. of 17, R. 2. cap. 8. But that Riot was notorious, for there were a great number assembled in the Manor house of *Drayton Bassett*, who did detain the same forcibly.

And therefore if the Riot &c. be great and notorious, whereof by common intendment every person may take knowledge, it is not safe for the Justice or Sheriffe, &c. to expect and stay till complaint thereof shall be made unto them, or that they shall have information or notice given them thereof, lest they incurre thereby the said penalty of 100. li.

Dyer 110.

If any one other of the Justices of the Peace of the Countie (besides those two which are next) shall execute this statute, that shall excuse the two next Justices, for that the stat. giveth power herein to all Justices.

P. R. 30.

If one, or the two next Justices shall come, and not the Sheriffe, or under-Sheriffe, such Justices as doe come, shall be excused of the forfeiture of 100. li. but though the said Justices shall be excused of the said forfeiture; yet if there cometh but one Justice of Peace, he ought to arrest the Riottors, and to remove the force, and commit or bind over the Riottors, otherwise he is finable, &c.

And if there shall be two Justices present, and neither the Sheriffe nor under-Sheriffe; yet those two Justices are finable, if they shall not do all that, which (without the Sheriffe or under-Sheriffe) they are authorized to doe by the said statute.

Lamb. 311.

But no Justice of Peace that dwelleth in another Countie is bound (upon the said penaltie of 100. li.) to execute the said stat. of 13. H. 4. although he dwelleth next to the place where the Riot is, and although he be in Commission of the Peace for the Countie where the Riot is, as it seemeth: for the words of the statute are, The Justices which dwell neereft in every Countie where such Riot shall be, and not which dwell neereft to the place where the Riot shall be; and yet it seemeth safe that such Justice dwelling out of the Countie, upon notice of such Riot, doe come into the Countie, and doe his endeavour to suppress the same Riot, and to execute the Statute, for that he is one of the Justices of the Countie.

Lamb. 311.

P. 5.

If the Sheriffe or under-Sheriffe doe not come, the Justices ought to send for them, as *M. Marrow* thinketh.

And some seeme to be of opinion, That if the Sheriffe or under-Sheriffe shall not come to the Justices, being sent for to assist them, that then all the Justices of Peace dwelling neere, or remote, shall be excused of the same penaltie of 100. li. or of any other penaltie or fine; for that the said Statute doth give the Sheriffe or under-Sheriffe equall authority, and as it were joine him in commission in the copulative with the Justices of Peace. But others seeme to be of another opinion, viz. That if the Sheriffe or under-Sheriffe shall not come, yet the Justices of Peace shall be fined if they come not, and arrest the Riottors, and doe not moreover proceed to doe therein all that which (without the Sheriffe or under-Sheriffe) they are in any waies authorized to performe.

P. R. 30.

Lamb. 312.
Crompton.

Now what the Justices of Peace may or ought to doe therein (by force of this Stat. of 13. H. 4. 7.) without, or in the absence of the Sheriffe

riffe

riffe and under-Sheriffe, is worthy consideration, as being needfull for the Iustices of Peace to know, and safe for them to performe, as well for the speedy preventing of such present mischiefs as may happen to the Common-wealth by such dangerous assemblies, as also for their saving of the penalty of the law otherwise like to lie upon them.

But herein I dare not determine, finding that others (of good judgement and experience) that have written hereof, have both seemed to doubt herein, and have written sparingly thereof.

And yet there is no doubt, but that the Justices of Peace (without the Sheriffe or under-Sheriffe) upon all Riots, may and ought first to goe to the place, and such Riottors as they shall see or finde riotously assembled, they may and ought to arrest them, and to take away their armor and weapons, and to remove and commit the Riottors, or may cause them to finde sureties for the Peace, or good behaviour, and for want of such sureties may commit them to the Gaole; all which any one Justice of Peace may doe.

Also two Justices of Peace after the Riot committed (without the Sheriffe or under-Sheriffe) may and ought to enquire of the Riot; and if upon such inquiry the Riot be found, the said Iustices may fine and imprison the offenders, as hereafter appeareth.

But whether two Justices of Peace seeing a Riot, may record the same upon their owne view, without the Sheriffe or under-Sheriffe, and thereupon (without any enquire) may fine them for the same, and may commit them to prison till they have paid the same fine, is to be considered. I know the common opinion to be, that they cannot record the Riot (without the Sheriffe, or under-Sheriffe) for, say they (by the Statute) the Sheriffe or under-Sheriffe are associated to the Justices of Peace, and have equall authoritie with them therein; and then consequently the Justices of Peace alone upon their owne view, without enquire, can neither fine them, nor imprison them for their fine.

Yet *Fineux* chiefe Justice saith, that * this Statute of 13. H. 4. was made for the common profit of the Realme, and for a hastie remedie, and to avoid a present mischiefe like to happen, and therefore shall be construed largely for the common good, and in furtherance and advancement of expedition of Justice.

Also we see that any one Justice of Peace may doe all these things in case of a Forcible Entrie, &c. Any one Justice of Peace may come with the power of the Countie, if need bee, and may arrest the offenders, and may record the force by him viewed: and this record shall be a sufficient conviction, so that he may thereupon commit the offenders to the Gaole, and may fine them.

Also this Statute of 13. H. 4. doth relate to the said Statute of Forcible Entries 8. H. 6. touching the conviction of offenders by the Record of the Iustices.

Also if two Iustices of Peace (without the Sheriffe) shall see a Riot, they may arrest them, and make a Record thereof, and the offenders shall be concluded by such Record, for that the view of the Riot is not to be traversed. *Lamb.* 313.

Lamb. 313.
313.

P. Riots 2.
Comp. 67. b

14. H. 7. 9. b.
See Co. 10.
103. b. 6. 6. 11.
a matter.

21. P. 6. 6. 5.

P. 1.

Fin. Just. 9.
17.
14. H. 7. 8.
Comp. 65.
196.

**M. Lamb. et
thinketh it
to be the
Stat. of 14.
E. 3. 1. that
Fineux
meant, ra-
ther than
the Stat. of
13. H. 4.*

Also the Statute 34.E. 3. 1. seemeth to enable two Justices of Peace, to imprison and fine Riottors, and that without enquiry, and then consequently, it seemeth they are to make a Record of the Riot. P. Inst. 18.

And yet *quere* whether two Justices of Peace (upon the Statute of 13. H. 4. 7.) without the Sheriffe, may upon their view of a Riot, record the Riot, and without enquiry fine the offenders, and imprison them till they have paid their fine (as convict by their view & record) though this may seeme to be more for the Kings advantage, rather then to hazard the fine upon the finding it by enquiry. But it rather seemeth, that the Justices upon their owne view of a Riot, may Record it, and commit the offenders, and then to certifie, or send the Record into the Kings Bench, where the offenders shall be fined: And this I take to be more warrantable, and safer for the Justices, if they shall not enquire thereof.

Two Justices.

And now to the particulars of that which the two next Justices of Peace, with the Sheriffe or under-Sheriffe, must doe in execution of this Statute of 13. H. 4. 7. every one upon paine of 100. li.

1. First, they shall goe to the place in person, if they be able, where the Riot, &c. shall be. 13. H. 4. 7. P. 1. 2.

Posse Comitatus.

And they shall take the power of the County (if need bee) *sc.* they shall have the aide of all Knights, and other temporall persons under that degree, that be above the age of xv. yeeres, and be able to travell: for all the Kings subjects that are in the County where a Riot, &c. shall be, being able to travell, must bee aiding and assistant to the Justices of Peace, Sheriffe, or under-Sheriffe (or other commissioners) when they shall be reasonably warned, to ride or goe with the said Justices, and the Sheriffe, &c. in aide to resist such riots, &c. upon paine of imprisonment, and to make fine and ranfome to the King; which ranfome shall be treble so much at the least as the fine, *Dyer* 232. Yet by others, by ranfome, is intended that the party is to make his agreement with the King, *ad verum valorem omnium bonorum suorum mobilium*. 2. H. 5. 8. P. 12.

But Sir *Edw. Coke* L. 127. saith, that in legall understanding, a fine and ranfome are all one.

And it is referred to the discretion of these Iustices, how many, or few, they will have to attend them in these busineses, and in what sort they shall be armed, weaponed, or otherwise furnished for it. Lamb. 109. Cramp. 64.

Againe, it is not good for the Iustices to assemble the power of the County, without certaine information, or knowledge of such riotous assembly: yet if upon false information of a riot, to bee at such a place, the Iustices shall cause the power of the County to bee assembled, the Iustices shall be excused by reason of the information; and if without information, the Iustices shall thinke that such a riotous assembly is made in such a place, and shall assemble the power of the County to goe thither to arrest the Riottors, and when they come to the place, they finde a Riot there indeed, they must arrest and imprison the offenders; and shall be excused of the assembly made by them: but if they shall finde no Riot there, then shall they be punished for making such an assembly of their owne heads, without information. Lamb. 110. Cramp. 64.

Arrest.

2. All such offenders as they shall finde there present, they shall arrest them

them, or cause them to bee arrested, and shall remove the force, *sc.* shall commit to prison all the Riotors, and take away their weapons.

Also it seemeth, that all such as came in the company with such Riotors, or in the company of any of them, if that the Iustices shall finde them there present (though they doe nothing, and though they came without any intent of their parts to commit any Riot, yet) they shall be arrested, imprisoned, and fined. See to this purpose in the title *Forcible Entrie, cap. 77.*

Mr. Leach, 2. Comp. 61. Also all such Riotors, as the Iustices shall meet in their way (riotously arrayed, and coming from the place) they may arrest and imprison them, for that they found them unlawfully assembled; but they cannot record any Riot by them done, for that they saw it not, yet they must afterward (as it seemeth) inquire thereof by a Iurie, that so the offenders may be fined, &c. See more in this title.

Lamb. 320. But if the Iustices doe come and see the Riot committed, and after the said Riotors shall escape from the Iustices at that time, yet the said Iustices shall record it; but they cannot arrest them at any other time, except it be presently after and in fresh suit; neither can they fine the offenders, nor award any processe against them upon that record which they shall make: and yet for that they saw the Riot (and these Riotors that be escaped, committing the riot) they shall record it. But that record shall not be kept amongst the records of the Peace, but the said Iustices shall send the said record into the Kings Bench, that Processe may from thence be made upon it, against those Riotors that bee escaped; where also the said offenders shall not bee admitted to any Traverse, but must of necessitie make fine for their said offence.

If after the Iustices and Sheriffe shall see the Riot, the said Riotors shall escape, and the Iustices and Sheriffe shall record the same Riot, and then one of the Iustices be put out of the Commission, or the Sheriffe, or one of the Just: shall happen to die, yet shall that Record be sent, or certified into the Kings Bench, by the other Iustice and Sheriffe. *Lamb. 320.*

But if (after the enquire, and before the Certificate, the Sheriffe, or) the Iustices shall die, or be put out of the Commission, or that their authority doth cease by the death of the King, or otherwise, such Record cannot be certified without the Kings Writ of *Certiorari. Br. Record. 17. 64. & Lamb. 320.*

21. H. 7. Comp. 196. Also such offenders, as the Iustices saw committing the Riot, though they shall escape from the Iustices, yet the said Iustices may after grant out their Warrants for them, and send them to the Gaole, till they shall finde Surety for their good behaviour.

30. E. 3. 1. Pl. 11. 18. If such offenders shall be departed before the coming of the Iustices yet (upon certaine information of their being there) the said Iustices may also grant out their warrants for them, and may commit them, till they have found sureties for their good behaviour: Or rather the Iustices shall doe well to proceed against them, by enquire, and so to fine the offenders for the King, &c. See more in this title.

Lamb. 310. Comp. 62. 258. Also in the execution of this arrest of the Riotors, the said Iustices, &c. may justifie the beating, wounding, or killing of any the Riotors that

that shall resist them, or that will not yeeld themselves to them. *Vide tit. Homicide, bis.*

Also the said Iustices may take from such Riotors, their Armor, Harneſſe, and weapons, and shall cause the same to be priſed, and to bee answered to the King, as forfeited.

Record.

3. After the arrest made, the said Iustices, and Sheriffe, or under-Sheriffe, shall make a record in writing, of the said riot, (*ſc.* of all that which they shall see, and finde done in their preſence againſt the Law) without any other enquiry: And that their record is a ſufficient conviction of the Offenders. *13. H. 4. c. 7. P. 1.*

If two Iustices of Peace shall see any making of a Riot, they may command others to arrest the Riotors, and then make their Record thereof, and the offenders shall be concluded thereby. *Fitz. Juſt. of Peace, fol. 17.*

But if the Iustices of Peace doe not themselves see the Riot, they cannot make a Record thereof; but then they must enquire thereof.

If the Justices of P. &c. going to see a Riot, another Riot shall happen in their preſence; they may record this, and arrest and imprison the offenders.

So if the Riotors shall make a Riot upon the Iustices (and Sheriffe) that doe come to arrest them for their former Riot, they may record that also.

So if two Justices of Peace (and the Sheriffe, or under-Sheriffe) shall meet for any other cause of service, or for any private buſineſſe (as upon an arbitrement, or other like matter,) and a Riot shall happen to be done upon themselves, or in their sight, they may record it, and may arrest, and imprison the offenders.

And if the Iustices of Peace shall record a Riot, and upon examination of the matter after, it shall appeare to be no Riot; or that they saw it not, or that there was no Riot at all; yet the parties shall bee concluded thereby, and have no remedy (as it seemeth;) and therefore the Iustices shall doe well to be adviſed what they record. See *9. H. 6. fol. 60. Br. Judges 2. Fitz. Juſt. of P. fol. 17.* *9. H. 6. fol. 60. Cromp. 65.*

And againe, for that this Record of the Iustices and Sheriffe, is a ſufficient conviction in it ſelfe againſt the offenders, therefore it ought to be formall and certaine, as well for the time and place, as also for the number, weapons, manner, and other circumstances, because the parties be concluded thereby, and shall not be received to traverse or deny it in any point. *Lamb. 114.*

The forme of the Record, *vide hic, cap. 130.*

This Record ought to remaine with one of the said Iustices of Peace; and shall not bee left amongst the Records of the Sessions of the Peace, it being made out of the Sessions, and not appointed to be certified thither. *Lamb. 114. & 145. 175.*

Imprison.

4. Also the said Iustices of Peace (and none other Iustice of Peace) shall commit such offenders to the Gaole, there to remaine convi& by their view, testimonie, and record (as in caſe of Forcible Entrie) untill they have paid a fine unto the King, *P. 1. 11. Lamb. 114.*

Also

Co. 8. 120.

Also such commitment of the offenders to the Gaole ought to bee done presently.

Lamb. 310.

And the power of the Countie ought to be aiding to the Sheriffe, or under-Sheriffe, for the conveyeing of them to the Gaole.

Crompt. 61.

If the Iustices of Peace, and Sheriffe, or under-Sheriffe, shall record the Riot, and shall not presently commit the Riottors to prison: or if they shall commit them to prison, and shall not record the Riot, they shall forfeit every of them 100.li. by the stat. 13. H. 4. for that they have not done execution of the same Statute: for by the statutes they shall record and commit, and againe, by the same statutes the offenders must be as well imprisoned, as fined.

p. Force 2.
p. Riots 1.

5 Also the said Iustices of Peace (and none other) shall assesse the fines upon the said offenders; for they have best knowledge of the matter, &c. Co. 8. 41. a. which fines by the Statute 2. H. 5. 8. ought to be of good value, that our thereof the charges of the said Iustices & other Officers may be borne, *sc.* their charges in going, tarrying, and returning, &c. about the suppressing and enquire of such Riots; of which charges payment shall be made by the Sheriffe, by indenture thereof made between him and the said Iustices. Fint.

Lamb. 312.
557.
Crompt. 167.
p. 10.

And yet such fines must be reasonable and just, and *secundum quantitatem & qualitatem delicti*, and not unreasonable and excessive (for *excessus in re qualibet jure reprobatu communis*. Co. 11. 44.) and so it is commanded by the Statutes 9. H. 3. 14. 3. E. 1. 6. 18. E. 3. 2. & 34. E. 3. 1. P. Inst. 1. & 18.

And the reasonableness of the fine shall be adjudged by the discretion of the same Iustices of Peace. Co. L. 56. b.

Note also, that the fine assessed in this and such like cases, must not be imposed upon all the offenders joyntly, but must be assessed upon every offender severally. Co. 11. 43. 44.

And yet note, that in some cases a fine or an amerciamment shall bee imposed upon divers jointly; (*sc.* sometimes upon a whole Countie, sometimes upon a Hundred, and sometimes upon a Towne, as for an escape of a murderer, &c. whereof see *hic postea*) but that is by reason of the incertainty of the persons, and for the infiniteness of their number. Co. 11. 43.

And the said Iustices shall cause the said fines to bee estreated into the Eschequer, that so the said fines may be levied to the Kings Majesties use; and then they are to deliver the offenders againe, as it seemeth: Or else the said Iustices may record such Riot by them viewed, and commit the offenders; and after certifie the record to the Assises or Sessions, or into the Kings bench, as in case of a Forcible Entry.

31. H. 4. 7.
p. 2.

6 But if the Riot was not committed in the presence of the said Iustices of Peace, or that the offenders bee departed before the coming of the said Iustices, and Sheriffe, or under-Sheriffe, then the said Iustices, or two of them at the least, within one month, immediately after such Riot, Assembly, or Rout, shall enquire thereof, by the oaths of a sufficient Iurie (to be returned by the Sheriffe:) and the same Riot, &c. being found by such inquisition, the said Iustices must make a Record in writing, of such their enquire and presentment found before them, which Enquire.

which record also is to remaine with one of the said Iustices: *P.R. 29.* See the forme thereof, *hic cap. 130.*

The forme of a precept to be made by the Iustices, to the Sheriffe, to returne a Iurie, &c. See *hic postea, cap. 130.*

The form of such enquire or presentment. See also the title *Presidents*, *hic postea, cap. 130.*

This enquire shall not be, but where the Riottors are gone before the comming of the Iustices: or where they had not the view of the Riot. *Crompt.*

It is not necessarie that one of the Iustices of Peace (which shall make enquire of a Riot) be of the *Quorum*.

Although the words of the Statute are, the same Iustices (i.e. which came to see the Riot) shall enquire; yet if any other two Iustices of Peace of that Countie shall doe it, that will suffice. *Lamb. 316.*

Also the Iustices of Peace, although they goe not to see the Riot, yet they may enquire thereof within the moneth after.

Neither is it of such necessity, to have the enquire within the month, that for default thereof the presentment shall be void; for the Iustices of Peace may enquire thereof at any time by force of their Commission: but if it be not within the moneth, then every of the two next Iustices are in danger to lose 100. li. for it. And yet if these Iustices doe charge the Iurie within the moneth, and doe give day unto them for to yeeld their verdict and presentment after the moneth, the statute is not offended. *Lamb. 317.*

But yet (it seemeth that) the Iustices of Peace are not bound upon the penaltie of 100. li. to enquire within the moneth, of all pettie Riots, but only of such Riots as are notorious and dangerous, and in the nature of Insurrections, or Rebellions.

At this enquire, the Sheriffe or under-Sheriffe ought to be present with the Iustices of peace; but the Sheriffe or under Sheriffe be now as Ministers only for the returning of the Iurie (for this enquire,) and be not herein associated with the Iustices, as they were before in arresting the Riottors, and recording their disorder, and therefore they are now to be spared from being Iudges therein: howbeit by this their presence they may helpe to espie the evill; and besides, it addeth force and credit to the Certificate. *Lamb. 316.*

If the Iustices doe assemble themselves, the Sheriffe and the Iurie, to make enquire of a Riot within the moneth, and the parties been agreed amongst themselves, so as none will sollicite the enquire, nor give in evidence for the King upon that Riot, yet ought the Iustices to proceed (*ex officio*) to make enquire of that Riot, seeing it may be that some of the Iurie may have knowledge of the Riot. *Lamb. 317.*

And also the Iustices ought to make proclamation, that if any man wil give evidence for the King concerning that Riot, or (generally) will inform the Kings Iustices of any Riots, Routts, &c. And thereupon some other persons may perhaps come forth to inform them therein. *Crompt. 62.*

But if (at the parties request) the Iustices shall dismisse the Iurie without enquire, they are finable in the Star. Chamber to the King for the same. *P.R. 29.*
And *Crompt. 62.*

And if the Justices shall not proceed herein (*ex officio*) without some will give in evidence for the King, *quare*, if they shall not bee hereby in danger to lose the hundreth pound upon this Statute, for the reasons above said.

And it seemeth that the Justices of Peace may justly binde to their good behaviour, the parties that first complained to them of this Riot, and have caused them to meet, and now will not prosecute the same for the King, but have agreed it.

21 H. 4. c. 7.
P. 1.
Lamb. 317.

21 Imp. 100.

Lamb. 317.

After such enquire had, and the truth of the Riot found, the said Justices have authority (by the said Statute) to heare and determine the same according to the Law, *viz.* they may make out their Warrant, or Proceſſe, (*ſc. a Venire facias, hic cap. 132.*) against the offenders under their owne *Teſte* (thereby to cause the offenders to come in and answer,) and upon the appearance of the said offenders, the said Justices may asseſſe their fine, and may commit them to prison till they have paid their said fine, and may deliver them after payment of the same fine, or upon sureties taken for it (which sureties ought to bee bound by Recognizance :) or otherwise they may receive their Traverse, and thereupon (if the matter wil so serve) to discharge and dismiſſe them : But then the said Justices shall doe well to send such indictment or inquisition found (and such Traverse) to the next Quarter Sessions, or into the Kings Bench, and there the Traverse shall bee tried and determined according to Law. *P. R. 30.*

Here and
determin.

Note that all indictments, inquisitions, or presentments, taken and found before Justices of Peace, of any Riot, Forcible Entry, or other thing against the Peace, may bee delivered into the Kings Bench, by the hands of the same Justices of Peace, before whom the same was found; or otherwise may bee removed from the said Justices of Peace, before the Justices of the Kings Bench, by a *Certiorari*; in both which cases, the Justices of the Kings Bench may proceed to heare and determine the same.

Now by the Statute made 2. H. 5. cap. 8. the King is to beare the charges of the Justices of Peace, which shall execute the Statute of Riots. And therefore,

Concerning the fine so asseſſed by the Justices of Peace, the Justices of Peace may thereout (as it seemeth) pay the charges of the said Justices, and of the Iurie (which made the inquirie, and by whom the Riot was found) *ſc.* for their dyet, and the Sheriffes fees, &c. And then they may bring the Record of this enquire to the next Quarter Sessions of the Peace; and there deliver the same Record to the Clerke of the Peace, together with the residue of the money remaining of the fine, &c.

Also the Clerke of the Iustice which maketh up the Record of this inquirie, may have his fees out of that money : or else hee may take of every offender xii. d. when they have paid their fine; for so the Clerks of the Peace use to doe.

Or rather the said Justices are to be paid their charges (in going, and continuing, in doing, and executing the said office) by the Sheriffe, by Indentures

See
Lamb.
317.

Indentures made between the Sheriffe and the said Iustices; whereof the Sheriffe upon his accompt in the Exchequer may have due allowance. 2. H. 5. cap. 8.

But when men are indicted of Riots (or the like) they will usually yeeld themselves, and pray to bee admitted to their fine (in which case the Iustices of Peace commonly doe asseſſe but some small summe, or fine, and upon the payment thereof doe discharge the offender :) and hereby the offenders are not imprisoned, (which would worke more feare in such offenders, then such fine) and therefore it is behovefull for the Iustices of Peace to use good care and discretion herein, for by the Statute 2. H. 5. cap. 8. the offenders are as well to be imprisoned, as fined; and it seemeth much more serviceable, and more agreeing with the intent of the Law. Besides, this fine called by * divers old Statutes, Ransome, (or *Redemptio* in Latine) seemeth by the property of this word to imply, That the offenders ought first to be imprisoned, and then to be ransomed, and delivered in consideration of this fine. Lamb. 318
* Marb. cap. 1, 2, 3, 4
Lamb. 318

And these fines the Iustices of Peace are now willed by the Statute (2. H. 5. cap. 8.) to put in greater summes then they were wont to bee put in such cases, for the bearing of the charges of the Iustices and other Officers, &c. as is before said.

At the Common Law, a Riot was punishable as a Trespasse, and as well the fine, as the imprisonment were at the discretion of the Judges: and in the same manner the Statute of 13. H. 4. enableth the Iustices of Peace to punish such offenders. But now as well the imprisonment, as the fine of such offenders are to be encreased by the said Statute 2. H. 5. cap. 8.

And therefore where the Iustices of Peace are remisse herein (*ſc.* in not sufficiently punishing such offenders by due fine and imprisonment) the Lords in the Star-Chamber, may (and doe often) asseſſe upon Riotors for the same Riot (for which the Iustices of Peace have formerly asseſſed a fine in the Countrey) a greater penalty, if they see cause; and yet in this case the offenders be not twice punished for one offence, but that part of the due punishment is inflicted at one time, and part at another. Crompt. 63.
P. R. 14.

Certificates. So lastly, if the truth or Riot cannot be found by the Iustices of Peace upon such inquirie (being hindred by the perverseness of the Jurors, or by the unlawfull maintenance, countenance, or embracery of other persons that put themselves into the cause) then within one moneth next after the inquirie, the same Iustices and Sheriffe or under-Sheriffe, shall certifie before the King and his Councell (*ſc.* into the Star-Chamber, or to the Bodie and Board of the Privy Councell, or into the Kings * Bench *Crompt. 63.*) so much of the fact and circumstances thereof, as may by any wayes or meanes appeare unto them, with the certainty of the names of the principall offenders, upon paine of one hundred pound to every of the said Iustices, Sheriffe, or under-Sheriffe: and also the said Iustices, with the Sheriffe, or under-Sheriffe, ought in the same Certificate, to certifie the names of such maintainers and embracers, with their misdemeanours; and of the time, place, and other circumstances, and 11. H. 4. 7.
19. H. 7. 11.
P. 3. 15.
Lamb. 318
Lamb. 319
* Br. Præm.
tit. 1.

P. 15.

and the impediments, why the truth of the Riot, &c. is not found, upon paine of forfeiture of twenty pound a piece, to every of the Iustices and Sheriffe. *Cromp.* 63. b. & 199. b. The forme of such Certificate, See *hic cap.* 130.

P. 3.
Lamb. 318.

The end of this Certificate is but onely to put and force the offenders to answer thereto, before the King and his Councell: and though the words of the Statute doe make this Certificate to be of the force of a presentment of twelve men against the offenders, Yet such Certificate is no conviction, but that the offenders may *traverse it, by the words of the same Statute. And so this Certificate is onely of the nature of a Declaration, or indictment at the Common Law, and therefore it ought to comprehend the certainty of the time, place, persons, and other materiall circumstances.

* Put such
Traverse &
Certificate
shall be sent
into the
King Bench
and there be
tried.

If this Certificate be not made within one moneth after the inquiry, then is it not according to the Statute, and so not good to force the offenders to answer.

If two Iustices of Peace, and the Sheriffe, shall goe to see a riot, yet any other two Iustices of the County may make the inquirie, and then they altogether, or the first two, or the last two (with the Sheriffe or under-Sheriffe) may make Certificate thereof within the moneth after that inquisition taken.

Lamb. 310.
Cromp. 41.

Where there be severall Certificates made, or that the Certificate and the inquirie doe disagree, then that shall be preferred which is best for the King.

If there shall be twenty parties to a riot, and the Jurie shall finde but ten of them guilty, yet the Iustices may certifie that twenty committed that riot, and this Certificate of the Iustices shall stand good.

Also it seemeth, if any thing materiall happen to bee omitted or left out in the inquisition, yet it may be supplied by this Certificate, and it shall stand good.

Lamb. 310.

If after the inquiry, and before the Certificate made, the Sheriffe shall die, or one of the Iustices be put out of the Commission, no certificate can then be made, by the opinion of Master *Marrow*.

For the forme of such Certificate, See *hic cap.* 130.

11 H. 5.
P. 6.

Upon the default of the two next Iustices, and Sheriffe, or under-Sheriffe, for not executing the said Stat. of 13. H. 4. the party grieved may have a Commission out of the Chancery, to enquire aswell of the riot, as of the defaults of the said Iustices of Peace, and Sheriffe, or under-Sheriffe.

Commission.

11 H. 5.
P. 6.

Also the Lord Chancellor of England as soone as he shall have notice of such a riot, shall send the Kings Writ to the Iustices and Sheriffe, commanding them to execute the said Statute of 13. H. 4.

And although that such writ come not to the said Iustices, Sheriffe, or under Sheriffe, yet they shall not be excused of the penalty of 100. li. aforesaid, if they make not execution of the said Statute. *Ibid.*

2 H. 5. c. 9.
2 H. 6. c. 14.
2 H. 7. c. 14.

Also, if any assemblies of people in great number, in manner of insurrection, or other rebellious riots, shall bee done and committed, and that such offenders shall withdraw themselves, to the intent to avoid

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the

the execution of the Law, then, upon Certificate by two Justices of Peace and the Sheriffe of that Countie, by letters under their seales, to the Lord Chancellor of England, of the same riot, and that the common voice and fame thereof runneth in the said Countie, the Lord Chancellor may make a *Capias* to the said Sheriffe, for the apprehending of such offenders; and after, if need be, a writ of proclamation, that the said offenders yeeld themselves in the Kings Bench, at a certaine day, upon paine to be convict thereof.

Rogues and Vagabonds. CAP. 47.

THe benefit of this Law, and of the former Law, made for the setting to worke, and releefe of the popre, are both of them worthy of the care of the Justices of peace, and of their best endeavours, for the due execution thereof; for by them,

1. Idlenesse is very much repressed: idlenesse, which of it selfe is the root of all evill.

2. Infinite swarmes of idle Vagabonds are rooted out, which before wandred up and downe, to the great danger and indignitie of our Nation.

3. Wee our selves are now compelled but to relieve the poore of our owne Parishes (whose conditions and estates wee know,) and to a certainty of gift, wherewith wee are now taxed by our neighbours: whereas before wee gave we knew not what, nor to whom; and many times to such as were ready to have cut our throats, if opportunity had served them.

In this title of Rogues, I have intermingled certaine resolutions of the Judges, made upon the Statute 39. *El. cap. 4.* for the better understanding thereof: which resolutions you shall finde in *M. Lambert.*

One Justice. Any one Iustice of Peace may appoint all Rogues and Vagabonds, which shall be taken begging, wandring, or misordering themselves, to be stripped naked from the middle upward, and to be whipped till their body be bloody, 21 *Jac. cap. 28.* 39 *El. cap. 4.*
P. *Vag. 1.*
J. *Jac. 7.*

After such whipping, the said Justice of Peace shall make them a testimoniall under his hand and seale, testifying their punishment, and mentioning the day and place thereof, and the place whither they are to goe, and what time they are limited to passe thither, &c.

The forme of such a Testimoniall, *vide hic cap. 124.*

All Rogues and Vagabonds are to be sent and conveyed forthwith, from Parish to Parish by the Officers (*sc.* the Constables of every of the same) the next straight way to the parish where they were borne (if it may be knowne by the parties confession, or otherwise:) Or, the place of birth being not knowne, then to the Parish where such person last dwelt by the space of one yeare, there to put themselves to labour: Or, (not being knowne where such person was borne or last dwelt, then) to the parish thorow which such person last passed without such punishment; and then the Officers of such Village or Parish, are to convey them to the House of correction of that Limit wherein that Village is, or to the common Gaole; there to remaine and be employed in worke till

39 *El. cap. 4.*
21 *Jac. 28.*
3 *Car. 4.*

till they shall be placed in service for one whole yeere; or not being able of body, till such person shall be placed in some Almshouse of that County.

Asold.

The Rogue, whose place of birth or last dwelling cannot be known, having wife and children under 7. yeeres of age, they must goe with the husband to the place where they were last wilfully suffered to passe without punishment; where the children must be releevd by the work of their parents, though the parents be committed to the house of correction.

Againe, by the Statute made 7. Jac. cap. 4. All such Rogues, Vagabonds, sturdy beggars, and other idle and disorderly persons, as shall bee found and apprehended in the generall privie Search made by the Justices warrant, &c. shall be brought before the said Justices at their said meeting, and shall be there punished; or by the said Justices warrant shall be sent to the house of correction, there to be set on work, kept, and corrected, &c.

But here, first to describe you these manner of persons (i.e. Rogues and vagabonds) that you may the better know them.

A Vagabond (as one saith) is he which hath neither certaine house, nor stedfast habitation; but liveth idly, and loytering: A man (as another describeth him) *sine re, sine spe, sine fide, sine sede.*

A Rogue may be so called *quia offiatim rogat. Minsh.*

Or it signifieth an idle beggar that wandreth from place to place, without a lawfull Passport.

A Beggar, *Mendicus quasi manu dicens* (speaking with the hand) *Mos enim erat apud antiquos Egenum silentio manum extendere.*

And yet Vagabond in its proper sense, is one that wandreth about: and a Rogue and a Vagabond seeme to be all one; for the Latine words, *vagus* and *vagabundus*, signifie the one and the other: So as whosoever wandreth about idly and loyteringly, is a Rogue or Vagabond, although he beggerth not. *quod nota.*

§ 1. Jac. 7.
p. Vag. 1.

And more particularly, all these persons here under mentioned, being above the age of 7. yeeres, and offending as hereunder is mentioned, shall by our lawes be adjudged Rogues, or at least shall be punishable as Rogues.

1. All persons above the age of 7. yeeres, going about begging, upon any pretence or colour whatsoever: yea, although they bee licenced by any subject, except it be in the cases hereafter mentioned.

2. All idle persons going about the country, either using any subtil craft, or unlawfull games, or being fortune-tellers, or Juglers, or using any other like crafty science.

3. All Procters, Patent-gatherers, or Collectours for Gaoles, prisons, or Hospitals, wandring abroad.

§ 1. Jac. 7.

4. All Fencers, Bearewards, common Players of *Enterludes, and Minstrels wandring abroad. 21. Jac. cap. 28.

§ 1. Jac. 7.

5. All Pedlers, pettie Chapmen, Tinkers, and * Glasse men wandring abroad. 21. Jac. cap. 28. Especially if they be unknowne; or have not a sufficient Testimoniall.

6. All wandring persons and common Labourers, being able in body using loytering, and refusing to work for reasonable wages, not having living otherwise then by labour to maintaine themselves, are Rogues. And yet such persons as be of any parish, and have able bodies to work, and be no wanderers abroad out of the Parish, though they refuse to work at such wages as is taxed or commonly given in thole parts, are not to be sent to their place of birth or last dwelling, &c. but to the house of correction. See *tit. Poore*. Resol. 10

7. Poore persons appointed to aske releefe in the Parish where they dwell, by the Overseers thereof, if they shall begge in any other sort then is so appointed them; or shall beg by the High-ways, though in their owne Parish. See 39. *El. cap. 3. & Lamb. 427*. Resol. 11

And yet such persons are not to be sent to their place of birth, or out of the towne, except it be to the house of correction.

So it seemeth of all other poore persons begging in the Parish where they dwell (without the appointment of the Overseers) they are to be sent to the house of correction, *quare tamen*.

8. All persons wandring, and pretending themselves to be Ægyptians, or wandering in the habit and forme of Ægyptians, not being Felons.

9. Souldiers or mariners that shall beg (except as before *hic cap. 40. & hic postea*) or shall counterfeit any Certificate from their Generall, Governour, Captain, Lieutenant, Marshall, Deputie, or Admirall, shall be adjudged as common Rogues, and shall have the like punishment. But Souldiers and Mariners in divers like cases shall incur the danger of Felonie. See the title *Felonies by Statute*. 49. Eliz. 1. P. Chap. 11

10. Poore diseased or impotent persons, travelling to the Bathes for ease of their griefes, (and being licenced) yet if they beg; Or if such person be not licenced by two Justices; Or shall not return home again, according as they are limited by their said Licence; Or shall not be provided of necessary releefe, &c. for their travell: They shall be punished as Rogues. 39. Eliz. 4. P. V. 47.

11. A Rogue that hath been punished according to this Statute, and hath a Testimoniall, if through his or her default they doe not accomplish the order appointed by the said Testimoniall, then are they to bee whipped againe as Rogues, and so as often as any default shall be found in them, &c. P. V. 47.

12. A Rogue, &c. that shall goe with a generall passport, *sc.* which is not directed from Parish to Parish, is still to continue a Rogue, and may be punished by whipping againe. Resol. 13

So also may such a Rogue, as shall carie his owne passport without a guide: For by the letter of the Statute, they are to be sent, *sc.* conveyed from Parish to Parish by the officers of every the same.

13. Servants departing out of service, (*sc.* forth of one city, towne, or parish to another, or out of one Hundred or Countie, to serve in another) without a testimoniall, &c. or which shall be taken with any counterfeited or forged testimoniall, shall be whipped as vagabonds. 5. Eliz. 1. P. Labor. 1.

14. Persons infected, or dwelling or being in any house infected with 1. Jac. 1. P. Play. 4.

with the Plague, that contrary to the commandement of any officer, shall wilfully goe abroad and converse in company, shall be punished as vagabonds.

7. Jac. 4. 15. So all persons being able to labour, and thereby to relieve themselves, and their families, that shall run away, or threaten to run away and leave their charge to the Parish, &c. 21. Jac. cap. 28.

But such offenders last mentioned are to be dealt withall by two Justices of Peace; *sc.* All such persons so running away, shall bee taken to be incorrigible Rogues, and shall endure the paines of incorrigible Rogues, *sc.* they shall be sent (by two Justices of Peace) to the house of Correction, or to the Gaole, there to remaine untill the next Quarter Sessions, and then he or she shall be there branded in the left shoulder with an hot iron, &c. And from the Sessions shall be sent to the place of their last dwelling, &c. 1. Jac. cap. 7.

And all such persons so threatning to runne away (the same being proved by two sufficient witnesses upon oath, before two Iustices of Peace of that division) shall be by the said Justices sent to the house of correction (unlesse such person can put in sufficient sureties for the discharge of the Parish) there to be deteined and dealt withall as a sturdie and wandring Rogue; and from thence to bee delivered at the quarter Sessions; or at the meeting of the Iustices in that division, made for a generall privie search for the apprehending of Rogues, according to this Statute of 7. Jac. cap. 4. And are not otherwise to be delivered out of the house of correction.

But upon such their delivery, they are not to be sent to their place of Birth (as wandring Rogues) but to the place of their dwelling, if they have any; if not, then to the place where they last dwelt by the space of a yeere; &c.

And so of persons infected, &c. with the Plague, and punished as vagabonds as aforesaid.

11. Eliz. 4. 11. No childe under the age of seven yeeres, shall bee adjudged a Rogue *Children.* (within the Statute of 39. Eliz. 4.) But it seemeth, such children being vagrant, must be sent to, and placed with the father, or husband of the wife: and if he be dead, then with the mother, (where she was borne, or last dwelt by the space of one yeere.) And such children once thus settled or placed, must there remaine, and not be sent from thence to their place of birth, though after the parents die, or run away, or that the said children grow above the age of seven yeeres, yea, and though the said children after begge and prove vagrant in that towne, for there they must be set to labour. See *Resol.* 4. 9, 10.

39. Eliz. 4. 11. Children above 7. yeeres of age, going abroad vagrant, or begging in the countrey, shall be punished as Rogues, and sent to their place of birth, &c.

Resol. 5. The wife being a vagrant Rogue, must be sent to her husband, though he be but a servant in another towne.

Resol. 3. If the husband or wife have a house (though as an Inmate) and either of them Rogue about, they are to be sent to the towne where that house is.

No man is to be put out of the towne where he dwelleth, nor to be sent to their place of birth, or last habitation, but only a vagrant Rogue *Relief* *sc.* such as wander abroad in the countrey; and not such as are vagrant, or doe beg, in the same towne where they dwell.

Such as their estates of their houses bee expired, and servants whose time of service is ended, they shall not be put out of the townes where they last dwelt, or served, &c. *Vide tit. Poore.*

who may beg. The Justices of Peace (dwelling in or neere the place where any Seafaring man suffering shipwracke, shall land) may make a testimoniall under his hand to such person (not having wherewith to relieve himselfe in his travell homewards) setting downe in such testimoniall, the place, and time, where and when he landed, and the place of his birth or dwelling unto which he is to passe, limiting him therein a convenient time for his passage; which person (without the danger of this law) in his direct passe, and within his time in such his testimoniall limited, may aske and receive necessary reliefe. *39. Eliz. 4. P. Vag. 14.*

Persons suffering shipwrecke. The Justices of Peace in or neere the place where any poore, idle, *39. Eliz. 4. P. Vag. 14.* and wandring souldier or mariner (comming from the seas, or from beyond the seas) doth land, ought upon request, to give him a testimoniall under his hand, licensing him thereby to passe the next and direct way to the place whither hee is to repaire; expressing therein the time and place of such his landing, with the place of his dwelling, or birth, to which he is to passe, and to limit him a convenient time for his passage thither: and such person pursuing such licence, may aske and receive necessary reliefe, without the danger of Law. 21. *Iac. cap. 28.*

But now *quare* of these persons, and see *infra*.

Rogues whipped. Also one Justice of Peace, (or the Constable, with the Minister, and one other of the Parish) after the whipping of a Rogue according to the Statute, may make the said Rogue a Testimoniall under their hand and seale, for the conveying of such Rogue according to this Statute of 39. *Eliz. 4.*

And yet such Rogues may not beg in their travell, neither may the Constable of the Parish thorow which they passe, nor any other person, give them any Releefe (as it seemeth) for that were contrary to the Statute 1. *Iac. cap. 7.* and a forfeiture of x. s. But now for that after so many yeeres (since the making of these Statutes) they will not be reformed of their Roguish life, they are rather to be dealt withall as incorrigible Rogues, *sc.* to be caried by the Constable before the next Justice of Peace, and then by Warrant from two Justices to be sent to the house of Correction, or to the Gaole, there to remaine untill the next Quarter Sessions, &c. See Statute 1. *Iac. 7.* and the directions of Sir Francis Harvey at summer Assises 1630. *hic postea.*

And as for the Souldier or Mariner (especially such as are sick, hurt, or maimed) they now are usually, or may be, releevd with money by the Treasurers of every County where they come, *viz.* with such convenient summes, as may cary them to the next County; and this is by a latter Law, and therefore now it may seeme unfit, that either the Constable should releefe them, or suffer them to beg or aske releefe in their Townes *41. Eliz. 1. P. Cap. 10.*

Townes, for so the Countrey shall be double charged towards their releefe, *sc.* in paying to the Treasurer towards their releefe, and againe in giving them at home at their doores, 21. *Iac. cap. 28.*

So that I doe not finde, that any one or more Justices of Peace may or can in any case licence any man to beg, or aske releefe at all; but onely may make a testimoniall or licence in the two first former cases, *sc.* to such as suffer shipwracke, and souldiers, or mariners, comming from the Seas, to passe from place to place; and in those two cases onely, the Law tolerateth them to aske and receive necessary releefe, as aforesaid. For I observed before, that poore diseased persons travelling to the Baths (though licenced by two Justices of Peace) yet they might not beg, and besides must be provided of maintenance for their travell. See more in this title before.

Likewise poore prisoners delivered out of Gaoles, may in no wise beg. *Stat. 39. Eliz. cap. 4.*

I observe further, that (by the Statute 39. *Eliz. cap. 3.* though it bee now expired) no person whatsoever, might goe wandering abroad and beg, in any place wheresoever by licence or without, upon paine to bee taken as a Rogue.

And therefore *quare*, of such briefes and licences as lately have usually come from or in the name of the Lord Maior of London, licencing poore persons to travell, and to aske or beg releefe in their travell, and by generall passports, not directing them from Parish to Parish. See more in this title after *Resol. 13.*

And yet any one Iustice of Peace may licence labourers in hay and harvest time, to passe from one countrey to another to worke; but not to wander, or beg: See the title *Labourers.*

And so, any two Justices of Peace may make a testimoniall to servingmen. (or other servants, as it seemeth) departing from their masters, but such persons under colour thereof may not wander up and downe idly, nor beg: see the title *Labourers.*

Any two Iustices of Peace of the limit where any incorrigible rogue shall be taken (the one being of the *Quorum*) may commit such rogue to the house of correction, or to the Gaole, there to remaine untill the next quarter Sessions of the peace, and there to be dealt withall as incorrigible rogues, according to the Statute, 1. *Iac. cap. 7.* See *hic antea.*

Now these incorrigible rogues be such as shall either appeare to bee dangerous to the inferiour sort of people; or such as will not be reformed of their roguish kinde of life.

Of the first sort are such as shall offer any violence, or shall use any threatening speeches, or other like misdemeanours towards any person.

Of the other sort seeme these which follow, and such like.

1. Such as having had punishment, and thereupon sent to their place of birth, &c. and there settled according to the law, shall notwithstanding fall to their roguish life againe.

2. A Rogue that affirmeth that he was borne in such a Towne, in such a Countie, and is sent thither, if he were not borne there in truth, he is

39. Eliz. 4.

5. Eliz. 4.

See 5. El. 4.
P. Labourers.39. Eliz. 4.
P. Vag. 4.
L. Jac. 7.P. Vag. 4. 11.
39. Eliz. 4.

Resol. 1.

to be said an incorrigible Rogue, and is to be sent thence (by two such Iustices as aforesaid) to the house of correction in that County, and if there be none, then to the Gaole, untill the next Sessions, there to bee dealt withall according to the Statute.

3. The same course is to be observed (if it appeare not where he was borne) if he untruly affirme that he was last dwelling in such a Towne and County, by the space of a yeere, and was not. Resol. 2.

All persons being able to labour, and thereby to releee themselves and their families, that shall run away out of their Parishes, and leave their families or children to the Parish, shall be deemed and punished as incorrigible Rogues. Their punishment see *hic antea*. 7. Jac. 4.

Also all persons being able to labour, as aforesaid, that shall threaten to run away, and leave their families, as aforesaid, it being proved by two sufficient witnesses upon oath, before any two Justices of Peace of that division, shall be sent by the said Iustices to the house of correction, there to be dealt withall and detained as sturdy and wandring Rogues, &c. unless such persons shall put in sufficient sureties for the discharge of the Parish. See *hic antea*. 7. Jac. 4.

All such persons as shall in any wise disturbe, or hinder the execution of the Law, made 39. *Eliz. cap. 4.* or any part thereof, concerning the punishment, and conveying of Rogues; or shall make rescous against any officer or person authorized for the execution of this Statute, shall forfeit for every such offence v. li. and shall be bound to the good behaviour; and any two Iustices of Peace may binde such offenders to the good behaviour, and may also by Warrant under their hands and seales, cause to bee levied by distresse and sale of the offenders goods, the said summe of v. li. upon the confession of the offenders, or upon the testimony of two sufficient witnesses, before the said Justices, of such offence. 39. Eliz. 4. P. Vag. 3.

Within the compasse of which words and Statute, seeme to be these offenders and offences which follow :

1. To send Rogues by a generall passport, without conveying them from Parish to Parish, is a let to the conveying of Rogues, according to the Statute, and so a forfeit of v. li. upon them that shall so send them, and they are to be bound to the good behaviour. Resol. 11.

2. Note that all Rogues are to be conveyed to their place of birth, &c. by the Constables of every Parish (*sc.* from Constable to Constable, the next strait way) And therefore if the Officer (*sc.* the Constable) of any Parish will not receive a Rogue, to convey him to the place where he was born or dwelt, this is a forfeiture of v. li. in such Officer that shall not receive the party, to convey him or her, and he is to be bound as aforesaid, to his good behaviour. Resol. 14.

3. So it seemeth, if the Constable or other person, which shall convey a Rogue towards his place of birth, &c. if he shall not deliver him to the Constable of the next Parish.

4. If any be sent to a Towne whereto he ought to be sent, and is refused, being a sturdy or an impotent Rogue, the persons so refusing, shall forfeit v. li. and may be bound to the good behaviour. Resol. 12.

Note

Refol. 12.

Note that he which is to be sent, is to be delivered or offered to the Church-wardens and Overseers, and if they shall refuse him, they shall forfeit v. li. as aforesaid.

39. Eliz. 4.
P. Vag. 1.

1. Jac. 7.

Also any two Iustices of Peace (by Warrant under their hands and seals) may cause to be levied by distresse and sale of the offenders goods, all fines and forfeitures appointed, or to grow by this Act of 39. Eliz. 4. or by the Statute of 1. Jac. cap. 7. by conviction of any person, for any offence hereunder mentioned: (But such conviction must bee, either by confession of the offender, or by the testimony of two sufficient witnesses before the said Iustices.) As namely:

P. Vag. 3.

1. The Minister which shall not keep a Register booke, and therein enter the substance of every testimoniall made for the conveying of Rogues (punished in his Parish) shall forfeit for every default five shillings.

39. Eliz. 4.

2. The Constable which shall not doe his best endeavour, for the apprehending, punishing, and conveying of all Rogues which shall bee found in their Parish, shall forfeit for every such default tenne shillings.

1. Jac. 7.
P. Vag. 5.

3. The Constable which shall not cause to bee punished, and to be conveyed (according to the Statute of 39. Eliz. 4.) all such Rogues as shall be brought or sent to him by any of his neighbours, shall forfeit for every such default, xx. s.

Note that the Constable is to execute the said punishment of whipping of Rogues, either himselfe, or by some other by his procurement. See to the like purpose in the title *Trespasse*, cap. 57.

1. Jac. 7.
P. 5.

4. Every person shall apprehend, or cause to bee apprehended, such Rogues as he shall see or know to resort to his house, to beg or receive any almes, and him or them shall carie, or cause to be caried to the next Constable, or else shall forfeit for every such default, x. s.

Master Perkins in his Exposition of the eighth Commandement *Thou shalt not steale*, saith, That hee breakes that Commandement, which being lustie, lives by begging. And so of him that shall relieve, feede, or cloath stout and lustie Rogues and Beggars. Perkins pag. 91. & 749.

39. Eliz. 4.

5. Every person that shall willingly bring or convey in any vessel, out of Ireland or the Isle of Man, into this Realme, any Rogue, or any such as shall be like to live by begging, &c. shall forfeit for every such person so brought over, x. s.

39. Eliz. 4.
1. Jac. 7.
P. 11.

All (or the most part of) which fines and forfeitures appointed, or to grow by these acts (39. Eliz. 4. & 1. Jac. 7.) are to bee employed to the maintenance of the houses of correction, or releefe of the poore, where the offence shall be committed, at the discretion of any two Iustices of Peace (as it seemeth) of the same limit.

39. Eliz. 4.
P. Iust. 74.
P. Vag. 12.

Note that any two Iustices of Peace (whereof one to be of the *Quorum*) have power to heare and determine all causes that shall grow, or come in question, by reason of the Statute made for the punishment of Rogues. 39. El. 4.

At Summer Assises held at Royston for the County of Cambridge,

Anno

to be said an incorrigible Rogue, and is to be sent thence (by two such Iustices as aforesaid) to the house of correction in that County, and if there be none, then to the Gaole, untill the next Sessions, there to bee dealt withall according to the Statute.

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2. Note that all Rogues are to be conveyed to their place of birth, &c. by the Constables of every Parish (*sc.* from Constable to Constable, the next strait way) And therefore if the Officer (*sc.* the Constable) of any Parish wil not receive a Rogue, to convey him to the place where he was born or dwelt, this is a forfeiture of v. li. in such Officer that shall not receive the party, to convey him or her, and he is to be bound as aforesaid, to his good behaviour. Resol. 14.

3. So it seemeth, if the Constable or other person, which shall convey a Rogue towards his place of birth, &c. if he shall not deliver him to the Constable of the next Parish.

4. If any be sent to a Towne whereto he ought to be sent, and is refused, being a sturdy or an impotent Rogue, the persons so refusing, shall forfeit v. li. and may be bound to the good behaviour. Resol. 15.

Note

Refol. 12.

Note that he which is to be sent, is to be delivered or offered to the Church-wardens and Overseers, and if they shall refuse him, they shall forfeit v. li. as aforesaid.

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P. Vag. 1.

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39. Eliz. 4.
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Note that any two Iustices of Peace (whereof one to be of the *Quorum*) have power to heare and determine all causes that shall grow, or come in question, by reason of the Statute made for the punishment of Rogues. 39. El. 4.

At Summer Assises held at Royston for the County of Cambridge,

Anno

Anno Dom. 1630. Sir Francis Harvey delivered these rules or directions, upon the Statutes made against Rogues: *viz.*

1. That now (after so long time since the making of the Statute of 39. Eliz.) no Passe is to be allowed for these wandring people, and that such of them as doe passe or travell, though with any passport, yet are to be punished as Rogues, notwithstanding such their passport. And herewithall agreed Sir Nicholas Hyde at Cambridge Assises Anno Dom. 1630.

2. That if any Alehouse-keeper, or other person, shall but receive a Rogue, this is a relieving of them, and contrary to the Statute of 1 Jac. and is a forfeiture of x. s.

3. That giving of money by a Constable, to a Rogue, is a relieving of a Rogue within this Statute, and a forfeiture of x. s. *Mac ille.*

For the way to rid the Countrey of these Rogues, is to give them either due punishment (and that often, yea at every Towne, if they will not be reclaimed) and to keepe them from lodging and other reliefe, as much as may be; or else to send them to the Gaol, as incorrigible Rogues. (*Vide hic antea.*) For punishment is all the Charity that the Law affordeth them.

Any two Iustices of Peace may licence diseased persons to travell to Bath or Buxton, for the ease of their griefes; so as they be provided of necessary maintenance for the time of all their travell, &c. but they may not beg. See hereof more in this title before.

The Iustices of Peace, or the more part of them, within their divisions twice in every yeere at the least, shall meet for the execution of the Statute 7. Jac. 4. against Rogues and Vagabonds, sturdie Beggars and other idle and disorderly persons. And some foure or five dayes before their meeting, they shall by their warrants command the Constables of every Hundred, Towne, and Parish, &c. within their severall divisions, to make a generall privie search in one night, for the apprehending of all Rogues, and wandring and idle persons, to be brought before them at their said meeting, there to be examined of their idle life, and there to be punished: or otherwise by Warrant of such Justices to be sent to the house of Correction within the said Countie: which sending to the house of correction shall be by the said Constables who apprehended them (yet at the charge of the Hundred.) But by whom they shall be punished and whipped (*quare*) it seemeth by the Officers of the Towne where the Iustices so sit or meet; and thereupon to be sent to their place of birth, &c.

Also at the same meeting, the Constables of every Hundred and Parish, are to appeare before the said Justices, and there shall give an account (upon oath) in writing, and under the hand of the Minister of every Parish, what Rogues they have apprehended as well in the same search, as also between every such their meetings, and how many they have punished, or conveyed to the house of correction.

Also the said Justices at their said meetings, may assesse reasonable fines (being not above 40. s.) upon any the Constables, as well for their neglecting to performe this service; or in not appearing, or giving account,

count, as aforesaid, as also for the neglecting the safe conveying of Rogues, and other idle and disorderly persons, sent to the house of correction by Warrant from the said Iustices of Peace : which conveying of such persons to the house of correction, must be at the charge of the Hundred, as is aforesaid.

7 Tacit.

Also the said Iustices at their said meetings, may deliver such persons as they have formerly sent to the house of correction, from such their meetings.

Robberie. C A P. 48.

27 Eliz. 19.
P. H. and
C. 7. 10.
Co. 7. 7.

After a Robbery committed, the party robbed shall not have his action upon the Statute against the Hundred, except hee shall with all speed convenient, give notice of the said Robbery, to some of the inhabitants dwelling in some Towne, Village, or Hamlet, neere to the place where such Robberie was committed : And also except hee shall commence his suit or action within one yeere next after such robbery committed : And also except he shall first be examined upon his oath (within 20. dayes next before such action brought) by some one Justice of Peace (of the County where the Robbery was committed) dwelling within, or neere to the said Hundred, where the Robbery was done, whether he doth know the parties that committed the said Robbery, or any of them : and if he knoweth any of them, then also (before such action brought) he shall be bound before the same Iustice by sufficient recognizance, to prosecute effectually the said offenders, by indictment, or otherwise, according to the due course of Law. *Vide Ple.* 128.

In action sur le Statute de Winchester. ceux points ont esse Resolve in Communi Banco : sc.

1. Le party Robb. doner notice speedely al prochain village, ou al ascun inhabitant prope al Robbery : & le declaration in tiel cases, est que le plt. immediate apres le Robbery fait, Levie Hue & Crie, & done notice a le ville ou le Robberie fait, & alibi per totum Hundredum al inhabitants, &c. *Flo.* 128.

2. Le party doit commence son suit deins 1. ann. apres le Robbery, & apres le 40. jours puis le Robberie.

3. Le partie Robb. doit esse examin sur son Serement, devant le Iustice de P. sil n'ad conuissance del Robberie, &c.

4. Si mon serviant ou Carrier que carrie mes bienz soit Robb. c'est de que les bienz fuer prises serra examin, & jure devant le Iustice de P. & nemy le owner del bienz : & si le serviant ou Carrier ne voel esse examin, l'owner n'ad remedié.

3. Que home poit esse jure in son proper cause, sc. quant argent son serviant avoit.

27 Eliz. 19.
P. H. and
C. 7. 5.

After a Robbery committed, and notice thereof given, as aforesaid, the whole Hundred must answer the losse, if the Robbers be not taken within forty dayes. And if the Robbery be done in the division of two Hundreds,

Hundreds, both the Hundreds, and the Franchises within them shall be answerable for the Robbery done, and also for the dammages. *Stat. Winch. cap. 2.*

And yet for that the party robbed hath his recovery and execution against some one or few persons of that Hundred, therefore for a contribution to be yeilded from the residue of the said Hundred, upon complaint made by the parties against whom such recovery and execution is had; any two Iustices of Peace (the one being of the *Quorum*) being of the same Countie, and inhabiting in or neere the same Hundred where such execution shall be had, may asseffe and tax according to their discretions, proportionably, all and every the Townes, Parishes, and Hamlets, as well of the same Hundred (where the said Robberie was committed) as also of the liberties within the said Hundred, towards an equall contribution to bee had for the releefe of the parties charged: The which taxations or summes the Constables of everie Towne, shall within their Towne, Parish, or Limits, rateably and proportionably tax and asseffe upon every inhabitant and dweller in everie such Towne, Parish, Village, or Hamlet, for and towards the payment of such taxation and asseffment so made by the said Justices upon such Towne, &c. And if any inhabitant of such Towne, &c. shall refuse to pay the said taxation, so by the Constables taxed, then it shall be lawfull for the said Constables, and every of them to distreine for the same, &c. And the same distresse to sell, and the money thereof comming, the said Constables must deliver over to the same Justices, or to one of them, within ten dayes after collection: All which the said Justices shall deliver over (upon request) to the parties charged, to whose use the same was collected.

Note that the inhabitants of any other Hundred (within the same Countie where the Robbery was committed, or within any other Countie, with the Franchises within the Precincts of such Hundred) wherein negligence, fault, or defect of pursuit, and fresh suit after Hue and Crie made, shall happen to be, shall answer and satisfie the one moitie or halfe, of all and every such summes of money, and dammages, as shall be recovered or had against the Hundred in which the Robbery was done. *Ibid.*

And the like taxation, asseffment, levying and payment, as aforesaid, shall be had and made for a contribution within every Hundred, where there was any negligence, fault, or defect of pursuit, and fresh suit after Huy and Crie, *viz.* if upon suit any recovery and execution of any money, or any dammages shall be had against some one or few persons of that Hundred, where such default was (towards the ease of the Hundred, where the Robbery was done) upon complaint made by the parties so charged, to any two such Justices of Peace; the said Justices may make the like asseffment, &c. towards the releefe of the said parties so charged. *27. Eliz. 13. p. Huy and Crie 6.*

Note that if any man be robbed in his house, the Hundred shall not be charged therewith, whether it were done in the day or in the night. *Co. 7. 8.*

Also a Robbery done in the night shall not charge the Hundred: but yet if it be in the day time, or by day light, though it bee before Sunne rising, *Co. 11. B.*

rising, or after the Sun setting, the Hundred shall answer for it.

27. Eliz. 43.
p. Huy, &c. 7
Co. 7. 7. 1. 2. 3.

If upon pursuit any one of the offenders bee apprehended, the Hundred shall not be charged, although the residue of the offenders happen to escape; but pursuit without apprehending some one of the Robbers, is no excuse.

Comp. 179.

If the party that was robbed shall himselfe take any of the thieves after Huy and Crie made, this shall excuse the Hundred.

Although that one of the thieves be taken, yet if Huy and Crie bee not duely made, the towne where the default is, shall be amerced; But the party robbed shall have no remedy for his money (of the Hundred) in regard that one of the thieves is taken; and this is by force of the Statute 27. *Eliz.* whereas the Amerciament is by force of the Statute of Winchester.

Dier. 370.
p. 155.

It seemeth by my Lord *Dyer An. 22. Eliz.* that the Statute is satisfied, if the names of the offenders be descryed, so that they may bee indited and outlawed; *quare inde*, for the words of the Statutes of 13. *Ed. 1.* and 28. *Ed. 3.* are, That the countrey must answer for the bodies of such offenders. *Winch. 13. Ed. 1. cap. 2. & stat 28. E. 3. c. 11.*

Nota, the party robbed must bring and commence his action within xx. dayes next after his examination taken before the Iustice of Peace. 36. *Eliz. Dews case.*

Also the Justice of Peace must be abiding within the Countie, at the time of the examination taken by him, as it seemeth; for the Justice of Peace being out of the Countie, is but as a private man, and hath no authoritie to take such examination. See the title, Justices of peace, *hic. c. 6.*

If a man be robbed in Middlesex, and maketh Huy and Cry freshly into Essex, if the townes adjoyning doe not according to the Statute of Winchester, the party robbed may have his action of debt, in the one Countie, or the other, by *Fincham. 15. Ed. 4. 18. Br. Dett. 104.*

High-ways leading from one market Towne to another, shall be enlarged, so that there be neither dike, underwood, nor bush, whereby a man may lurk to doe hurt, within two hundred foot of the one side, and of the other; and if by default of the Lord that will not amend the ways as aforesaid, any robberies be done therein, the Lord shall be answerable for the robbery: and if a Parke be neere the high-way, the Lord must set his parke 200. foot of each side from the way, as aforesaid; or else must make such a wall, dike, hedge (or pale) that such offenders may not passe to and fro there, *Winch. 13. Ed. 1. cap. 5.*

And every Justice of peace may cause such highwayes to be enlarged and cleansed as aforesaid; See *hic antea tit. High-ways.*

Sacraments. CAP. 49.

Three Ju-
stices.

IT seemeth that three Justices of the Peace (one of them being of the *Quorum*) may out of the generall Sessions, take information and accusation (by the oaths of two honest persons) against such as shall deprave, or unreverently speake of the Sacrament of the body and blood of our Lord and Saviour Jesus Christ, against the Statute, &c. And may binde the accusers (and such other witnesses as were by) by recognizance (in 5. li. a peece) to give in evidence at the day of triall: But M. Lamb. ma-
keth a *quare* hereof.

Sabbath day, or Sunday.

NO Carier with any horse, nor Waggoner, Carter, nor Waineman, with any waggon, cart, or waine, nor any Drover with any cattell, shall travell upon the Sunday, upon paine that every person so offending shall forfeit xx. s. for every such offence. 3. *Car. c. 1.*

If any Butcher shall kill, or sell any victuall upon the Sunday, he shall forfeit for every such offence, vi. s. viii. d. *Ibidem.*

One Justice.

Any one Justice of Peace (Mayor, or head Officer of any Citie, or Towne Corporate) within their limits, upon their owne view of any of the said offences, or upon prooffe thereof upon oath by two or moe witnesses, or upon the confession of the party offending, may make their Warrant to any Constable or Church-warden (within their severall limits, where such offence shall be done) to levie the same forfeitures by Distresse, and sale of the offenders goods, rendring to the party the overplus. *Ibidem.*

Every Iustice, and head Officer aforesaid, have power to minister an oath to such witnesses. *Ibidem.*

All the said forfeitures shall be employed to and for the use of the poore of the Parish where the offence shall be committed. *Ibid.*

And yet any such Iustice, or other head Officer, out of the said forfeitures, may reward any person or persons that shall informe, or otherwise prosecute any such offender, according to their discretions, so that such reward exceed not the third part of the forfeiture. *Ibid.*

Provided that no person shall be impeached by this Act, unlesse hee be questioned thereof within six moneths after the offence committed. *Stat. 3. Caroli Regis cap. 1.*

There shall be no unlawfull exercises, &c. used upon the Sabbath day. *Hic c. 23.*

Against faires, and buying and selling upon the Sabbath day. *Hic cap. 27.*

Sewers. CAP. 50.

Six Justices.

Six Iustices of Peace in the Shire where any Lawes and ordinances of Sewers are to be executed, (two being of the *Quorum*) within their limits, may execute the said Lawes and ordinances of the Commissioners of Sewers, for one yeere after the expiration of any such Commission.

mission, except a new Commission be published in the meane time.

Co. 5. 100.
R. 10. 138.
240.

Note that the proceedings of the Commissioners of Sewers, ought to be limited and bounded with the rules of Law and Reason, and according to the ancient Statutes and Ordinances. See *hic cap. 6.*

Co. 10. 143.

Now these ancient Statutes concerning Sewers, are many, and are of three sorts.

The first sort consist in defending, and repairing of the wals, bankes, and Sewers, &c. of this sort are the Statutes made 9. H. 3. c. 15. & 16. 6. H. 6. c. 5. 18. H. 6. c. 10. 23. H. 6. c. 9. 12. E. 4. c. 6. 4. H. 7. c. 1. & 6. H. 8. c. 10.

The second sort consist in pulling downe, and removing Nufances, &c. as the Statutes made, 9. H. 3. c. 23. 25. E. 3. 4. 45. E. 3. 2. 1. H. 4. 12. 9. H. 6. c. 9. & 12. E. 4. c. 7.

The third consisteth of both sorts, *sc.* as well in repairing the bankes, &c. as in pulling down Nufances, &c. And of this sort are these Statutes following, *viz.* 23. H. 8. c. 5. 25. H. 8. c. 10. 3. E. 6. c. 8. 13. E. 1. c. 9.

The inconveniences which ensue by these Nufances, and especially by the new levying or inhancing of Weares, Mills, Stanks, Fish-garthes, Locks, Stakes, Kidles, and Flood-gates, are these: *sc.* The common passage of ships and boats in the great rivers, as also meddowes, pastures, and errable grounds adjoyning to the rivers, be greatly disturbed, drowned, wasted, and destroyed, many people perished, and the young fric of fish destroyed. See 1. H. 4. c. 12. 4. H. 4. c. 11. & 12. E. 4. c. 7.

The forme of the Commission of Sewers, the authority of the Commissioners, as also the form of their oath, you may see at large in the Statute 23. H. 8. c. 5. & P. 2. 4.

Note that the King by the Common Law, may award his Commission of Sewers, for the amending of the sea-bankes, and for the repairing, amending, and scouring of other bankes, sewers, gutters, ditches, pits, and trenches; so as the fresh waters may have their direct course. *F. N. B.* 113. 4. And see there the form of that Commission, and the proceedings thereupon.

Co. 10. 141.

These Commissioners cannot make any new great river, neither can they make new inventions (as artificiall mills to cast out the waters, or such like,) but such new rivers, & new inventions (if they be for the publike good) ought to be made by Parliament: And yet the making new of an ancient bank or sewer in a place more fit, and with some litte alteration and distance, and upon necessity, seemeth to be warrantable.

These Commissioners cannot cast downe any mills, causies, or stanks, &c. erected before the time of *Ed. 1.* but onely may cause them to be abated, if they be raised above their ancient heighths. *Co. 10. 138.*

These Commissioners ought to tax none towards these reparations, &c. but such as have prejudice or losse by the Nufances or defaults, and which have benefit by the amending or removing of them. *Co. 10. 142.* See the Statute and forme of the Commission, 6. H. 6. c. 5.

Co. 5. 100.
Co. 10. 143.

Also these Commissioners ought to tax all that be in danger to be indammaged by the not repairing, &c. (and that according to their land, &c.) And not to tax him only whose grounds lye next adjoyning to the river, &c. for, *Qui sentit commodum, sentire debet & onus.*

Note

Note that in all cases of taxing or rating by these Commissioners, it ought to be proportionable, and according to the quality, and yeerely value (of the lands, tenements, rents, commons, and fishings of the persons chargeable,) and not according to the quantitie or content thereof.

Co. 5. 120.
Co. 5. 124.
Co. 10. 119.

And the yeerely value shall be accompted as the lands, &c. are of their owne nature, without respect to be had to the bettering or impairing thereof by the good or bad husbandry of the owners or occupiers thereof (as it seemeth.) See *Co. L. 171. & 179.* to such purpose.

Co. 5. 120.
Co. 10. 119.

Againe, if the owner of any land be bound by prescription, or otherwise to repaire the banke of a river, wall, or sewer, &c. he ought to doe it: yet if he be not able to repaire it; or that there be other inevitable necessitie, or that there was no default in the party, but that the bankes, or wall, &c. are broken, or overflowen by tempest, or unusuall overflowing of waters, or the like (which be the acts and handy-worke of God, and which no providence or industrie of him that is bound to the reparations, could prevent,) in these cases the Commissioners ought not to charge him, only with the whole, but may, and (in good discretion) ought, to charge and taxe all such as have any lands (or other profits) there, in danger, or subject to losse, according to their lands, &c.

Co. 10. 119.

But when one is bound by prescription, or otherwise, to repaire a bank or wall, &c. if there be any default in him, and the danger not inevitable, but that hee alone may well repaire it, the Commissioners may there charge him only to repaire this: and if by his default the danger become inevitable, or that by his default he alone is not able to repaire it, where-by others are charged as aforesaid, every of them may have their Action of the case against him, &c. and shall recover their dammages according to their losse.

Also, where a man hath lands lying betweene the Sea, the river of Thames, or any other river, and his neighbours grounds, and is bound by prescription, or otherwise, to make, or keep certaine banks, or to scoure certaine ditches or sewers, between his said neighbour and the said river or Sea, and doth not make, keepe, amend, and scoure the same, as he ought to do, by reason whereof his neighbours grounds are drowned, the party so indammaged shall have his Action of the case against the other so making default, &c. See *F. N. B. 93. g. & 7. H. 4. 8. & 41.*

Co. 10. 119.
& 143.

Also, these taxations ought to bee particular, *sc.* upon every severall owner; or occupier of lands, tenements, rents, commons, and fishings, &c. And not to be a generall summe in grosse upon a whole Towne. See more hereafter, *sic. Stocks of the Shire, cap. 53.*

Sheriffes. CAP. 51.

One Justice. **T**He *Custos Rotul.* or the eldest Iustice of the *Quorum* (in his absence) ought at the generall Sessions after *Michaelmas*, to appoint two Iustices of the Peace (the one being of the *Quorum*) to have the oversight and controlment of the Sheriffe, under-Sheriffe, and other their Officers and Deputies, and the inspection and examination of their books and merciaments, and for making of Estreats, &c. in their County Courts. Also

Co. 10. 119.
P. 16. 15. 20.

Also either of those two Justices of peace, or any other Justice of peace, (as it seemeth by the words of the statute) upon complaint of the partie grieved, may examine the Sherife, Under-sherife, Shire-clearke, and plaintifes, concerning the taking, or entring of plaints in their said Countie-courts, and bookes against the Statute: *viz.*

1 If any plaints shall be entred in their bookes, in any mans name, unlesse the partie plaintife bee either present in Court in person, or by a sufficient Attorney or Deputie, that is knowne to be of good name and behaviour.

2 If that the plaintife find not pledges to pursue his said plaint (*scz.* such persons as are knowne in that Countie.)

3 If the plaintife shall enter more than one plaint, for one trespassse, contract, or cause.

4 If the Sherife, Under sherife, &c. shall enter, or cause to be entred any more plaints than the plaintife supposeth hee hath cause of Action for against the defendant.

And if the said Justices, or Justice of peace upon his or their examination, shall find any such default in the said Sherife, Under-sherife, or Clearke, that shall stand for a sufficient conviction, without any further inquirie, or examination; and they shall forfeit upon the same examination, fortie shillings to the King for everie default (the same to be recovered in the Exchequer.) And the same Justice or Justices that so shall take the examination, shall certifie the said examination into the Exchequer within a quarter of a yeare, upon paine of xl.s.

Also the said Justice of peace may examine the defaults of the Bailife of the Hundred, for not warning of the defendants (in such plaints) to appeare, according to his precepts received from the Sherife or Under-sherife. And if upon examination, the justice shall find any default in such Bailife, in not warning the defendant to appeare, or otherwise in not executing their said office, that shall stand for a sufficient conviction, and the said Bailife thereupon shall forfeit to the King for every such default xl.s. the same examinations to be certified into the Exchequer as aforesaid.

Sherifes, &c. shall make no estreats to levie their Shire amerciaments, untill the said two Justices (appointed at the generall Sessions as aforesaid) have had the view and oversight of their Bookes: And their estreats shall be made by Indentures (or shall be indented) betweene the said Justices, and the Sherife, and Under-sherife, and sealed with their seales, and the one part to remaine with the said Justices, and the other part with the Sherife, for to bee his Warrant to levie the amerciaments by.

The Bailifes &c. Collectors of the said amerciaments shall be sworne by the said Justices, that they shall not take more money than is forfeited and contained in their said estreats, sealed by the Justices as aforesaid.

Also the said Justices of peace, or one of them, may examine the defaults of the said Collectors, Bailifes, and other gatherers of the Sherifes amerciaments; whether they have taken or gathered any more money than is forfeited and contained in their estreats (sealed with the

seales of two Justices of peace as aforesaid :) And if upon examination the Justices, or Justice shall find any such default, That also without further inquirie, shall stand for a sufficient conviction ; And the said Collectors, Bailifes, or other gatherers of such amerciements, thereupon shall forfeit to the King for every default xli.s. The said examination also (whether it be by one or two Justices) is to be certified into the Exchequer as aforesaid.

Two Just.

Also the said Justices of peace upon suggestion or information of the partie grieved, shall make like processe, as in an action of trespassse against the said Sherife, Under-sherife, or other their officers (offending in any the particulars aforesaid) for to appeare before them to answer the said suggestion or information. See what the processe is in the title *Processe*, cap. 132.

The *Custos Rotulorum*, or any two Justices of the peace, the one being of the *Quorum* (ex officio, and without any Commission to that purpose to them to be directed) may take the Oaths of the Under-sherife of their countie, his Bailifes, Deputies, Clerks, and other Officers, before they shall exercise their said Offices, &c.

§ The Oath of the Supremacie :

§ The Oath for the true exercising their office.

See the forme of this last Oath, stat. 27. El. P. 32.

But speciall Bailifes made for the serving of processe, are not to bee sworn by this statute, as M. *Crompton* reporteth, and saith, That it was so adjudged in the Kings Bench : And yet the words of the statute be, That every person which shall have authoritie, or take upon him to intermeddle with execution of processe, &c. shall receive and take the said Oaths, *Crompton*. 76. & 103.

Souldier.

CHAP. 52.

One Justice.

EVERIE Justice of peace of the County where any Souldier, which hath served the King in his wars, shall be found, which hath sold, given, purloyned, or put away, &c. any horse or harnessse (wherewith he was set forth, or which was after appointed to him by the Lieutenant or Captaine, &c.) upon complaint and due prooffe of the offence to be made (by the owner, his Executors, or Administrators) to any such Justice, shall by the said Justice be committed to ward, there to remaine without baile untill he hath satisfied the partie grieved, his executors, or administrators, for such horse or harnessse, &c. unlesse he doe bring with him before the same Just. sufficient testimonie from his Captaine, &c. in writing under their seale, testifying that the said horse or harnessse, &c. was lost in the Kings service against the will of that souldier : or was taken by his Captaine, &c. from him, and appointed to some other to serve withall (except the same souldier were imprisoned for the same offence before, by his Lieutenant or Captaine, &c. and made restitution.)

The next Justice of peace to the place of landing of any poore souldier, mariner, or seafaring man suffering shipwracke, may make them a licence to passe to the place where they are to repaire, &c. See hereof in the title *Rogues*.

In

43. Eliz. 1.
8. Cap. 17.

In default of the Parishioners, Church-wardens, and Constables (that shall not asseſſe the tax imposed upon the Parishioners by the Justices at their Easter Sessions, towards the reliefe of disabled souldiers and mariners) any Justice of peace dwelling in that Parish, or (if none dwell there) in the parts next adjoyning, may asseſſe the same; and the same Justice of peace may also in default of the Churchwardens and Constables, levie the same by distresse and sale of the goods of the partie so refusing or neglecting, rendring to the partie the overplus, &c.

43. Eliz. 1.
P. 301. 8.

If any poore souldier or mariner, comming from, or beyond the seas, shall repaire to his place of birth, &c. and cannot there get worke, then upon his complaint, any two Justices of peace neere the said place, shall take order (by their discretion) to set him to worke; and for want of worke, the said Justices shall tax the whole Hundred (by their discretion) for his reliefe, till sufficient worke may be had.

Two Justices.

Stocke of the Shire.

CHAP. 53.

43. Eliz. 1.
P. 301. 13.

IN the default of the Parishioners, Churchwardens, and Constables (that shall not asseſſe the tax imposed upon the parishioners by the Justices at their Easter Sessions, towards the reliefe of the prisoners in the Kings Bench and Marshalsey; and of the Hospitals of that countie; and of the losses by fire, water, and other casualties, and reliefe of the poore within that countie,) any Justice of peace dwelling in that parish, or (if none dwell there) in the parts next adjoyning, may asseſſe the same: And the same Justice, or any other Justice of peace of that limit (in the default of the Churchwardens, and Constables) may levie the same by distresse and sale of the goods of the partie refusing or neglecting to pay his part thereof, rendring to the partie the overplus: And in default of such distresse, any Justice of P. of that limit may commit such person to prison, there to remaine without baile, till he hath payed the same.

Out Justice. Towhat is-
ses they
must be im-
played.

Also in default of the Parishioners, Churchwardens, and Constables (that shall not asseſſe the tax imposed upon the parishioners, by the Justices at their Easter Sessions, towards the releefe of maimed souldiers and mariners) any Justice of peace dwelling in that parish, or (if none dwell there) in the parts next adjoyning, may asseſſe the same: And the same Justice of peace (in default of the Churchwardens and Constables) may levie the same by distresse and sale of the goods of the partie refusing or neglecting to pay his part thereof, rendring to the partie the overplus. But in default of such distresse the Justices of peace may not commit such person to prison, as he might in the former case. 43. Eliz.

cap. 3. P. Captaine 11.

Now in these, and other rates and taxations, you shall observe these rules following:

Co. 2. 12.
See here 120

1 First, that the most reasonable rating of land, is by the yearely value, and qualitie thereof, and not by the quantitie or content.

Co. 2. 59.

2 Hee that occupieth (in his owne hands) lands lying in severall parishes, shall be charged in everie parish proportionably for his lands there.

3 The Farmour shall be rated for the lands, and not the Lessor, or Land-lord. Co. 54.

4 A man (*sc.* the Landlord) shall not be rated or taxed for his Farme rents, in as much as the Farmour or occupier of the land is chargeable for the same land. So where my Farmour is assessed by his goods, I ought not to bee assessed for my rent of the sayd farme. *Br. Quinz. 2. 4. 7. Hen. 4. 33. & 11. Hen. 4. 35.*

5 By goods in most cases a man may bee rated (as well as by lands (as well as by lands) but not both by goods and lands, as it seemeth.

The like you may see in divers acts of Subsidies, wherein there is usually a speciall Proviso, that no person shall be taxed both for his lands and goods, nor double rated : see the acts of subsidies, *Anno 7. 18. & 21. Jacobs Regis, & Annis 27. 29. 31. 35. 39. & 43. Elizab. 11. & 4. Caroli. Reg.* and yet see 44. *E. 3. Br. Customs 6.* where a tax of ten pound was made by the parishioners for the amendings of their Church, and was taxed to be levied of every plow land six pence, and of every Cow one penie, and of every ten sheepe ob. and I. S. for his land, cowes, and sheep, was rated at ix.s. and was distrained for the same, and upon a Replevin by I. S. sued, no Exception was taken to the manner of rate imposed upon I. S. But note that the said tax was made by his consent, *Et omnis consensus tollit errorem. Co. 5. 36. & 40.*

So then he that hath both lands and goods shall bee charged by the best (of them both) but hee is not to be double charged, *sc.* by the one and the other : and yet in some places they doe use to charge one person both by lands and goods : which if it bee warrantable by Law, yet it seemeth to be with this difference, *sc.* That where a man occupyeth land, and also hath in his hands a great estate or stocke of merchandise, or bee also a Clothyer, Maultster, or the like, that such person peradventure may be charged by his lands, and also by such his stockes; but for such goods or stocke of cattell whereby a man doth occupie, compasse, or manure his lands (as for horses, sheepe, kine, &c. wherewith he stocketh his land) a man shall not be charged : *sc.* if he bee charged by his land, he shall not also bee charged for such his cattell which doe manure the same land.

Also where a man is rated by his goods, it seemeth reasonable that such goods be rated after the value of lands to bee purchased : *sc.* One hundred pounds in stocke or goods, to be rated after 5. or 6. li. *per annum* in lands. And so after the like proportion for a greater or lesser estate in goods, stocke, merchandise, or the like.

Note, where a man is charged by goods, they must be *bona notabilia*, as it seemeth : And yet to the Subsidie, men are rated not onely by their stocke of merchandise or cattell, corne, household-stuffe, and other movable goods which are *Notabilia*, but also by their coine, and debts owing to them (deducting such debts as they owe to others, and such debts as be desperate :) But there the party over-rated, upon his complaint to the Commissioners, and his oath taken before them, that his goods, coyne, or debts, be not of such value (which oath the said Commissioners are authorised to take by the Statutes) the said Commissioners may abate

abate the said assessments, according as upon such examination shall appeare to them just. See the afore recited Acts of Subsidies.

Also for goods, a man shall be charged only in that Towne where the goods be at the time of the assessment. *Br. Quinz. 4. & 6.* See the Statute *9. H. 4. cap. 7.*

Also if a man bee assessed for his goods in D. when as hee hath no goods there, and be distrained for such assessment, he may have an Action of Trespass. *B. Quinz. 3. & 4.*

The Constables (or other officers) and greater part of the Parishioners (upon a generall warning given in the Church) assembled may make such taxations by law. See *Coke 5. 6. 7. Fi. 49.*

The like may be done by the Church-wardens, and the greater part of the Parishioners, for Church charges.

And if the greater part of the Parishioners will not meet upon such warning given, it seemeth the officers, and such of the Parishioners as will meet, may make such taxations.

Note, that such taxations being made for a Common wealth, as for the making or amending of a Bridge, Highway, Cawsey, Seabanke, or the like, they shall bind all persons (although they assent not) *44. Ed. 3. 18. 19. Br. Customs 6. Co. 5. 63. Fi. 49.*

And so of taxations made to repaire the Church, or for other common towne charges (as it seemeth) where such taxations are made by the greater part of the Parishioners, as aforesaid. See *Co. 5. 63. & 67. & 21. H. 7. fol. 20. b. & 8. B. 1. Fitz. Aff. 413.*

Also when assessments are made for the reparations of bridges, highwayes, seabankes, cawseys, and the like, it seemeth that the summe assessed upon particular men (or townes) ought to be competent and reasonable, having regard to the benefit which the parties assessed or charged, shall or may have and enjoy by reason of the said assessment; and so reasonable as that the party shall or may have more benefit than charge thereby; and then such assessments cannot bee reputed burthensome, or a charge to the subject, when hee shall or may reape benefit thereby. See *13. H. 4. fol. 14. & Co. 5. 63.*

If a towneship be amerced, and the neighbours doe (by assent) asseesse a certaine summe upon every inhabitant, and doe agree that I. S. shall gather it up, and that if it be not paid by such a day, that I. S. shall distreine for the same, in such case a distresse taken by I. S. (for such rates behind) is good. *Br. Cust. 6. Dors. & Stud. 74. b.*

Subsidie. CHAP. 54.

IF any person that ought to be set to the Subsidie, doe by his craft or covine escape the taxation, and it be proved before two Justices of peace of that countie; then shall he be charged at the double value of so much as he ought to have beene taxed at, and shall further bee punished at the discretions of the said Justices. See *7. & 21. lat. Reg.* and divers former Acts of Subsidies.

Swearing. CHAP. 55.

If any person or persons shall prophanely sweare, or curse, in the hearing of any Justice of peace of the Countie, (Mayor, Bailiffe, or head Officer of any Citie or towne Corporate) where such offence shall be committed; or shall be thereof convicted by the oaths of two witnesses, or by confession of the party before any such Justice of peace or head Officer, &c. every such offender shall for every time so offending, forfeit and pay to the use of the poore of that parish where the offence shall be committed, the summe of xii. d. 21. *Iac. Regis, cap. 20. & 3. Caroli, 4.*

Every Justice of peace, and every such head Officer may minister the said oath to every witness. 21. *Iac. cap. 20.*

Every Justice of peace and every such head Officer, may make their Warrant to the Constables, Church-wardens, and Overseers of the poore of that parish where the said offence shall be committed; and the said Constable, Church-wardens, and Overseers of the poore, by vertue of that warrant may levie the same summe and summes of money by distresse and sale of the offenders goods, rendring to the party the overplus. *Ibid.*

In defect of such distresse, the offender (if he or she be above the age of xii. yeares) shall by warrant from such Justice of peace, or head Officer, be set in the Stockes by three whole houres. But if the offender be under the age of xii. yeares, and shall not forthwith pay the said summe of xii. d. then he or she, by warrant of such Justice of peace or head Officer, shall be whipped by the Constable, or by the parent or master, in the presence of the Constable. *Ibid.*

But every offence against this law, shall be complained of, and proved as abovesaid, within xx. dayes after the offence committed. *Ibid.*

Transportation. CHAP. 56.

One Justice. **I**f should seeme by the words of the statute, that any one Justice of peace may inquire of, heare and determine (as also may examine the mariners, and every other person) of all and singular the offenders against the A & 1. & 2. *Phil. & Mar.* provided for the restraining of carrying Corne, Beere, Butter, Cheese, Herring, and Wood, beyond the sea; but *quare.*

Yet note that every man may transport Corne, it being at these prices following (except it be prohibited by Proclamation) *sc.*

Wheat	} the quarter	xxxii. s.
Rye		xx. s.
Barley and Mault		xvi. s.
Pease and Beanes		xvi. s.

21. *Iacob.*
3. *Car. 4.*

Also every man may transport any Beere, when the price of a quarter of Mault exceeds not the summe of xvi. s. 3. *Iac. cap. 11. 21. Ia. 28.*

And it is holden to be great policie, to provide that Corne bee alwaies of a reasonable and competent value, it being an assured meanes to increase and advance Husbandrie and tillage, the ancientest of all trades and professions, and commanded by God to Adam, *Gen. 3. 23.* One of the greatest commodities of this Realme, and much respected and favoured, as well by the common Law, as also by the common assent of the

the King, the Lords Spirituall and Temporall, and by all the Commons in many Parliaments, Co. 4. 39. See the Statutes 17. R. 2. cap. 7. 4. Hen. 6. cap. 5. & 1. & 2. P. & M. cap. 5.

Trespasse. CHAP. 57.

ALL and every lewd and meane persons, which shall unlawfully cut or take away any Corne growing; or rob any Orchards or Gardens; or breake or cut any hedge, pale, raile, or fence; or dig, pull up, or take away any fruit trees; or shall cut or spoyle any woods, underwoods, poles, or trees standing (not being felony;) And their procurers or receivers knowing the same, being thereof convict by confession of the partie, or by the testimony of one sufficient witness upon Oath before any one Justice of peace (where the offence shall be committed, or the offender apprehended;) shall for the first fault give the partie wronged such recompence, and within such time, as by any one Justice of peace (of the Countie where such offence shall be done) shall be appointed. And if such offender shall be thought (in the discretion of the said Justice) not able, or doe not make satisfaction accordingly; then the said Justice shall commit the said offender to some Constable, or other inferiour Officer (where the offence shall be committed, or the offender apprehended) to be whipped.

One Justice

Also it seemeth, that for the second fault, and every other offence whereof such offender shall be after convicted in forme aforesaid, such offender shall be whipped, as aforesaid, without any satisfaction to be taken. *ibid.*

If any Constable or inferiour officer, doe refuse, or doe not, at the commandement of the Justice (by himselfe, or some other by him to bee appointed) execute upon the offender the punishment aforesaid, the said Justice of peace may commit such Constable, &c. to the Common Gaole, there to remaine without baile, untill the said offender bee by the said Constable, or by some other by his procurement, whipped as aforesaid.

But no Justice of P. shall execute this stat. for any of the offences aforesaid, done unto himselfe, unlesse hee bee associated and assisted with one or moe other Justices of the peace whom the offence doth not concerne.

It seemeth that any one Justice of peace (not being the partie grieved) may send such offenders for their second fault &c. to the house of correction, as idle and disorderly persons, there to be detained, &c. at the discretion of the said Justice of peace; & this by force of the *stat. 7. Jac. 4.* especially if they be common offenders in this kind; or may bind them to their good Behaviour, & so over to the next quarter Sessions, & by order from thence, to be sent to the house of correction, there to be continued some convenient time.

Tythes. CHAP. 58.

TWO Justices of the peace (the one being of the *Quorum*) upon complaint by any competent Judge of Tythes, for any misdemeanor of the defendant in a suit of Tythes, (or for other duties of the Church) may cause him to be attached, and committed to ward, there to remaine without baile, untill he find sufficient sureties (unto the said Justices) by Recognisance to the Kings use, to obey the proceesse and sentence of that Judge.

Also

Also upon complaint or certificate in writing by any Ecclesiasticall Judge, that hath given definitive sentence in the case of Tythes against one which wilfully refuserh to pay the tythes, or summes of money so adjudged, two such Just. of Peace may cause the partie to be attached, and committed to the next Gaole, there to remaine without baile, till he find such suretie (as aforesaid) to performe that sentence.

¶ Ou si le partie disobey tiel sentence, il pois este excommenge pur tiel Contumacy, & donque si cestyissent excom': ne voile per 40. jours este reconciliable a l'esglise, sur Certificat fais al Roy per la Ordinarie en le Chancerie, le partie sera mise en prison tanque il voile satisfaire lesglise, & ceo per un brieve de Excom': Capiendo. Fi. 141.

Tyle. CHAP. 59.

IT seemeth by the words of the statute, that anyone Justice of peace may enquire, heare, and determine (by examination, or otherwise by their discretion) of all and singular the offences committed in tyle making, (*sc.* if they be not made good, and of earth well prepared, and also of due assise in length, breadth, and thicknesse,) and may asseffe the fines limited by the same statute: and may call before him such as have best knowledge in tyle making, and appoint them searchers of the said defaults, but *Mr. Lambert, 197.* maketh a doubt thereof.

Watch. CHAP. 60.

Everie Just. of peace may cause night watch to be duly kept, for the arresting of persons suspect, and night-walkers (be they strangers, or others) that be of evill fame or behaviour: and this they may doe by force of the commission, the first *Assig. Lamb. 190.*

This watch is to be kept yearly from the feast of the Ascension, untill Michaelmas, in every towne, and shall continue all the night, *sc.* from the Sunne setting, to the Sunne rising.

All such strangers, or persons suspected, as shall in the night time passe by the watchmen (appointed thereto by the towne, constable, or other officer) may be examined by the said watchmen, whence they come, and what they be, and of their businesse, &c. And if they find cause of suspicion, they shall stay them; and if such persons will not obey the arrest of the watchmen, the said watchmen shall levie hue and crie, that the offenders may be taken; or else they may justifie to beat them (for that they resist the peace and Justice of the Realme,) and may also set them in the stockes (for the same) untill the morning; and then if no suspicion be found, the said persons shall be let goe and quit: But if they find cause of suspicion, they shall forthwith deliver the said persons to the Sherife, who shall keepe them in prison untill they bee duly delivered; or else the watchmen may deliver such persons to the Constable, and so to convey them to the Justice of peace, by him to be examined and to be bound over, or committed, untill the offenders be acquitted in due manner. See more of watch in the title *Felony, cap. 109. Fint.*

These watchmen are also to apprehend all Rogues and vagabonds, Night-walkers, Evildroppers, scouts, & such like, & such as goe armed &c.

Note

Note that in an action of false imprisonment brought by one *Sm.* against *Browne* (a Constable of Chalmesford in Essex) these things were holden for Law concerning watches, about 32. *Eliz.*

1 First that no man is compellable to watch, except hee bee an inhabitant within the same towne.

2 That such as are inhabitants within the towne, are not compellable to watch at the will of the Constable, but onely when their turne cometh; and therefore *Gardy* (Justice) said that the statute of Winch. is, that from henceforth watches shall bee kept as hath beene used in times past, &c. and so the manner of watching is not referred to the will of the Constable, but onely to the use heretofore, which is commonly by turne, or by the house.

3 That if a man who is compellable to watch, shall contemptuously refuse to watch upon the commandement of the Constable, the Constable *ex officio* may set him in the stocks for such his contempt: *Tamen quare de hoc.* Or else the Constable may present such his default at the Assises, or Sessions of the peace, &c. or may complaine thereof to any Justice of peace who may bind the offender to the good Behaviour, & so over to the next Quarter Sessions &c.

Note also that both watching, & warding, must be by men that be able of body, and sufficiently weaponed.

Watermen. CHAP. 61.

Everie Justice of P. (as it seemeth by the generall words of the stat.) within the shires next adjoyning to the river of Thames (betweene Gravesend & Windsor) within his severall jurisdiction, hath power (upon complaint made to him by the Overseers & Rulers of the watermen and Whirrymen, or two of them, or by the Masters of any such servants) to examine, heare, & determinall offences against the statute: and to set at large him that shall be imprisoned by such Overseers or Rulers, according to this act, (if there be just cause:) and also by his discretion to punish those Overseers and Rulers, that shall unjustly punish any person, by colour of this act.

The offences of Watermen against this statute, are these:

1 No single man shall be a Waterman there unlesse he be a houskeeper, or an apprentice, or retained in service by the whole yeare. See the stat.

1. *lac. cap. 16.*

2 One of the (two) Watermen, rowing together in one boat, must be allowed by the most part of the eight Overseers, by writing under their seale; and must have used rowing there two yeares before.

3 Watermen shall not hide themselves in time of pressing for the Kings service, &c.

4 Watermen shall not take for their fare and labour, above the prizes assessed, &c. and set up in tables in Westminster Hall, &c. But *quare* whether the Justice of peace be to meddle in this; See the statute at large.

Wax. CHAP. 62.

Everie Justice of peace may examine, and search (by his discretion) such as doe sell, or set forth to bee sold, any candles or other workes
of

of Wax at higher price than after the rate of *iiii. d.* the pound, over the common price of plaine Wax, betweene Merchant and Merchant, and may punish them by forfeiture of the worke, or value thereof, and by fine to the King.

Wine. CHAP. 63.

Everie Justice of peace (as it seemeth by the words of the statute) within the precinct of his office, (at the request of any subject, to whom deniall of sale shall bee made of any Wine, and full payment therefore offered according to the prizes set downe by the Lords, &c.) may enter into the places where such Wine shall lie, and may sell and deliver the same Wine desired to be bought, to the person requiring to buy the same, taking the Buyers money toward the satisfaction of the forfeiture, &c.

wood. CHAP. 64.

Two Justices of peace (not being of kindred, alliance, counsell, or fee, to the Lord or owner of a Wood) appointed by the more part of the Justices of peace at their Sessions, upon complaint of the Lord made unto them, may divide and set out the fourth part of the Wood, if the Lord and Commoners thereof (being first called before them) cannot agree upon it.

weights. CHAP. 65.

Two Justices of peace (the one being of the *Quorum*) may by examination, or enquire, heare, and determine the faults of head officers, in cities, boroughes, and market townes, that doe not twice everie yeare view and examine all weights and measures in their townes, &c. And doe not breake and burne the defective.

Also two such Justices may (by examination, or enquire) heare and determine the faults of all buyers and sellers, which doe not buy and sell with weights and measures that be lawfull, *sc.* with such as bee marked and sealed, *sc.* in market townes, (or like and equall with the Kings standard *sc.* out of market townes *quare*) Also the said Justices may breake and burne all defective weights and measures. See *hic postea*.

The said Justices may fine all and everie the offenders aforesaid by their discretion, and may make processe against them, as if they were indicted of trespassse against the peace. For the processe, see hereof in the title, *Processe*.

Now for the readier direction of the Justice of peace herein, I thought good to set downe the just and certaine contents, of all (or most sorts of) weights and measures, that so they may the better judge what weights and measures be unlawfull, or defective, and what not.

By the Statute of *Magna Charta*, cap. 25. there shall be but one Weight and one Measure of Corne, Wine, Beere, and Ale, and one Yard, throughout the whole Realme, (*sc.* according to the Kings Standard, in the Exchequer) and this statute of *Magna Charta* hath since herein beene confirmed by many severall Parliaments, viz. by the statute of 14. E. 3. 12. 25. Edw. 3. cap. 10. 27. Edw. 3. 10. 34. Edw. 3. 5. 13. Rich. 2. 9.

8. Hen.

8. Hen. 6. 5. 7. Hen. 7. 4. 11. Hen. 7. 4. & 12. Hen. 7. 5. as there-
by appeareth.

Raff. 8. Dis.
fol. 527. b.

And yet notwithstanding there alwayes hath beene, and still are, two
kinds of weights used in England, and both warrantable: the one by law,
the other by custome (as it seemeth,) but they are for severall sorts of
wares or commodities; for there is *Troy weight*, and *Averdepois*.

Raff. 8. Dis.
fol. 527. b.

1 *Troy weight* is by law; and thereby are weighed gold, silver, pearle,
precious stones, silke, electuaries, bread, wheat, and all manner of graine,
or corne, is measured by *Troy weight*. And this hath to the pound xii.
ounces, or xx.s. sterling weight.

Raff. 8. Dis.
fol. 527. b.

2 *Averdepois weight* is by custome (yet confirmed also by statute;) and
thereby are weighed all kind of Grocerie wares, Physicall drugs,
Butter, Cheefe, Flesh, Wax, Pitch, Tarre, Tallow, Wools, Hemp, Flax,
Yron, Steele, Lead, and all other commodities not before named (as it
seemeth,) but especially every thing which beareth the name of garbel,
and whereof issueth a refuse or waste. See *Raff. 8. fol. 527.* and the booke
of *Assise, impress. 1597.*

And this hath to the pound xvi. ounces, or xxv.s. sterling weight.

Also in this *Averdepois weight*, unto every hundred is allowed xii.
pound weight: so as 112 pounds make a hundred weight, six and fiftie
pounds make halfe a hundred, and 28 pounds make a quarter.

Raff. 8. Dis.
fol. 527. b.

Also all manner of *Averdepois* shall be weighed by lawfull weights,
seale according to the Standard of the Exchequer, *P. Weights 14.*

14 ounces and a halfe, & two pence weight Troy,
doe make 16 ounces of *Averdepois*.
7 pounds, } *Averdepois*, make the gallon.
7 pintes, }
14 pounds, } *Averdepois*, make the peck.
14 pintes, }
56 pounds, } *Averdepois*, make the bushell.
56 pintes, }

Measures of
Corne, accor-
ding to *Aver-
depois weight*.

Pintes, or pounds.

Quarts.

Pottles.

Gallons.

Pecks.

Bushels.

Coombes.

Quarters.

5120	512	256	64	16	8	4
2560	256	128	32	8	4	2
1280	128	64	16	4	2	1
640	64	32	8	4	1	
320	32	16	4	1		
80	8	2	1			
20	2	1	Ten quarters of corne is a Last.			
10	1					

Measures of
Graine accor-
ding to *Troy*
weight.

Beere

	Beere measures.						Ale measures.				Measures of Beere and Ale.
Pintes.	288	144	72	36	18	9	256	128	64	32	
Quarts.	144	72	36	18	9	4	128	64	32	16	
Pottles.	72	36	18	9	4	2	64	32	16	8	
Gallons.	36	18	9	4	2	1	32	16	8	4	
Firkins.	4	2	1				4	2	1		
Kilderkins.	2	1					2	1			
Barrels.	1						1				

See for Corne, Beere, and Ale, more fully in that which followeth :

Troy
weight, 12.
H. 7. 15. 0
51. H. 3.

32 Wheat cornes taken in the midft of the eare,
weigheth 1. d. sterling.

Twentie pence sterling maketh the ounce Troy.

12 ounces maketh in $\left\{ \begin{array}{l} \text{weight 1 l. Troy.} \\ \text{measure 1 pinte.} \end{array} \right.$

Two pintes, or ponnys, maketh the quart.

Two quarts, maketh the pottle.

8 pintes }
4 quarts } maketh the gallon.
2 pottles }

Eight quarts maketh the peck.

64 pints }
32 quarts } maketh the $\left\{ \begin{array}{l} \text{Bushell,} \\ \text{or} \\ \text{Firkin.} \end{array} \right.$
8 gallons }

Sixteene gallons }
Two Firkins. } maketh the $\left\{ \begin{array}{l} \text{Kilderkin.} \\ \text{halfe Barrell.} \\ \text{Rondlet.} \end{array} \right.$

256 pintes }
128 quarts }
32 gallons } maketh the $\left\{ \begin{array}{l} \text{Coombe,} \\ \text{or} \\ \text{Barrell.} \end{array} \right.$
4 firkins }
2 kilderkins }
4 Bushels }

512 pintes }
256 quarts }
64 gallons } maketh the $\left\{ \begin{array}{l} \text{Quarter,} \\ \text{or} \\ \text{Hogshead.} \end{array} \right.$
8 firkins }
4 kilderkins }
2 barrels }
8 bushels }

So the $\left\{ \begin{array}{l} \text{Pinte, and pound} \\ \text{Firkin, and bushell} \\ \text{Barrell, and coombe} \\ \text{Hogshead, and quarter} \end{array} \right\}$ are of like content.

Also the Statute of 23. H.8. cap.4. doth limit the weight of every of these 3 vessels here next named, being emptie, as followeth, *sc.*

1, the barrell
2, the halfe barrell
or kilderkin
3, the firkin

$\left\{ \begin{array}{l} \text{must weigh} \\ \text{(being emptie)} \end{array} \right\} \left\{ \begin{array}{l} 26 \\ 13 \\ 6\frac{1}{2} \end{array} \right\}$ pounds:

Measures of Corne.

All kind of corne and graine is measured by Troy weight.

By Statute the bushell must containe eight gallons, or 64 pounds or *Bushell.*
pintes of wheat, 31. E.1.12. H.7.5. P. *weights* 2. *Rastal.* 34. *Diu.*

And yet by the booke of Assise, imprinted *An.Dom.* 1597. the Bushell is to containe 56 pounds (or pintes) of Averdupois weight (which is three pounds, or three pintes and eight ounces Troy more than the stat. or Troy weight.) For 56 pounds or pintes Averdupois weight, and 67 pounds eight ounces Troy weight, doe justly agree.

Also eight bushels striken, make the quarter of corne, 11. H.7.4.25. E. 3.10. & 34. E.3.6.

Also everie measure of corne shall be striked without heape, 25. E. 3. 10. and all purveyances shall bee by such measure, *sc.* striked without heape. *ibid.*

Water measure, sold within Ship-board, shall containe five peckes striken, to the bushell.

No person shall buy or sell with a bushell, except it be sealed, and marked by the officer, and according to the Kings Standard.

But note, that in many places and countries, the measure of corne doth much differ, and the bushell in one place is greater than in another.

And yet in the measure of corne *Consuetudo loci est observanda*, if it be a custom exceeding all memory, and used without any lawfull interruption; for such time and usage sufficeth for a Law, though regularly Custome or Prescription against a stat. is not good, except that such customes and prescriptions bee also confirmed by stat. or that they be saved by another stat. see *Br. presc.* 2.50. *Pl.* 36.b. & 8. H.7. fol.4.b. *Dr. & Stud.* 47.

But this difference of measure of corne, should seeme to come partly from the diversitie of Clarkes of the Markets, (there being a Clarke of the market for the Kings house, another for the Prince, another for the Duchie, others in corporate townes, and others belonging to Lords of liberties) and partly from the abuse of divers corporate townes, and other privileged places, or liberties, where they by usurped custome (without any good warrant of law) have used to have and to buy by such measures: And where the Clarke of the market for the K. hath for-borne or neglected to meddle, in regard perhaps of their corporation, liberty, or some other respect. But this abuse two Justices of Peace (the one being of the *Quorum*) may reforme: *sc.* two Justices of Peace of the county, where there be no Justices of peace within that Corporation, &c.

Also the Clarke of the market for the Kings house, may reforme this in all places within the Verge, 27.H.8.cap.24.

And yet by the words of the statutes of 25.E.3.cap.10. & 34.E.3.cap.6. the rents and farmes of Lords shall be measured by such measures as they were wont to be, whether it were by heaped measure or greater measure than the statute appointeth.

And note that the Clarke of the market shall carry with him all his weights and measures signed according to the Standard of the Exchequer, 16.Rich.2.cap.3. And the Justices of peace may, yea ought for to fit with the Clarke of the market, at his comming into the country, &c.

Sir Francis Harvie hath often delivered in his charge at Cambridge Assises, these directions : *sc.* That one justice of peace at the least, ought to fit with the Clarke of the market, to see that the Kings subjects bee not wronged. And that the Clarke of the market ought to have with him his directions out of the Exchequer. And that hee may take no money for any Bills, &c. And that he ought to seale no Bushell, or other measures, or weighrs, but once (and not yearly as they use to doe :) And that if after the first sealing hee shall take any thing for the sealing thereof againe, or for the shewing thereof, &c. it is Extortion, yea it is one of the greatest oppressions (said hee,) for that it concerneth almost all men.

Bread.

For the assise of bread, I refer you to the bookes made for the assise thereof, and will only set you downe some short observations therein.

1 All sorts of bread ought to be weighed by Troy weight.

2 *Post septem dies, panis non ponderetur.*

3 The Bakers shall not sell to any victualler, &c. to bee retailed, but onely thirteene peniworth for twelve pence, as well mans bread, as horse-bread.

4 Every Baker shall have a marke of his owne, for his bread. *Poulr. Stat. at large, p. 121. & Rast. weights 7.*

5 Every sort of bread shall bee weighed according to the price of the middle sort of corne.

6 No man shall bee a common Baker, except that he hath beene an Apprentice to that trade by the space of 7 yeares at the least.

7 The Statute doth appoint three sorts of bread to be made and sold to the subjects : *viz.* white bread, wheaton, and Houshold bread ; besides the horse-bread.

8 The Bakers of Cities, Boroughs, and Corporate towns, shall have *viz.* allowance, for the baking of every quarter of wheat, over and above the second price of wheat in the market.

9 Bakers inhabiting out of cities, boroughs, and corporate townes, shall have *iiij.s.* in allowance for their charges in baking of every quarter, &c.

10 But forreiners bread should weigh 6. ounces in the penie loafe, more than the towne dwellers, for that they beare not such scot and lor as the others doe.

11 Lastly for horse-bread, that three horse-loves be sold by the baker for a penie, *xij.d.* for *xij.* and every loafe to weigh the full weight of

of a penie white loafe, at what price soever the wheat be sold.

For the punishment of the Bakers for their unlawfull bread, *quare* whether they shall onely be amerced, &c. after indictment and conviction of their said offence; or that the Justices of peace (or sworne officers in Leets) may take away their unlawfull bread, and give it among the poore, as officers in corporate townes are enabled or appointed to doe, in the end of the booke of Assise, imprinted Anno 1597. And all Justices of peace are there willed and required to bee ayding and assisting to the said officers therein. But by the stat. 51. Hen. 3. & 13. R. 2. 8. Bakers and Brewers being convict for not observing the assise, the first, second, and third time, they shall bee amerced according to the offence (if it be not grievous.) But if the offence be grievous or often, then shall they suffer punishment of the bodie, without redemption (or remitting of the offence either for gold or silver) *sc.* a Baker to the Pillorie, and the Brewer to the Tumbrell (now called the Cucking-stoole, as it seemeth by Mr. Lamb. 62.) or to some other correction. See another statute concerning Bakers and Brewers, and their punishments, and to the same effect, made *incerto tempore*, cap. 2. & cap. 6. Poultons statutes at large, fol. 111.

Note, that within every Leet or market there ought to bee a pillorie and a Tumbrell, to punish the bakers and brewers that offend &c. *Fit. Leet.* 12. And for want thereof the Lord of such Leet, or market, shall make a fine to the King, *Cro.* 149.

Also they which have the keeping and correction of the assise of Bread and Beere, if they have not a Pillorie, & a Tumbrell to punish Bakers and Brewers that are faulty, they shall forfeit their Franchise. *Cro.* 148.

Also a Leet may bee seised into the Kings hands, if the Steward there shall take money to spare the punishment of the Tumbrell, where one shall offend in the assise of bread or ale, *Libr. Instr. Cromp.* 181.

The Millers Toll-dish also must be according to the standard.

Now Millers are to take for the toll but the twentieth part, or 24 part, *Millers.* according to the strength of their water, and custome of the Realme, stat. 3. E. 1. *de viſibulariis. Raſt. ſit. weights. Din.* 7.

And yet in some places the Millers doe claime and take the 16 part; and where the custome hath beene so used time out of mind, it seemeth good and warrantable; *tamen quare.*

But the Miller ought to take but one quart, for grinding of one bushell of hard corne; and if he fetch and carry backe the grist to the owner, he may take two quarts of hard corne; and this hard corne is intended of wheat, rye, and messlin (which is wheat and rye mixed.) And for Mault, the Miller shall take but halfe so much toll, as he taketh for hard corne, (*sc.* one pinte in the bushell) for that Mault is more easily grownd than wheat, or rye: but if the Miller doe fetch to his mill, and carie backe the mault to the owners house, then the Miller also shall have double toll. See *Cromp. author. des Courts*, 221. & 224.

Note that Millers are not to be Common buyers of any corne, to sell the same againe, either in corne, or meale: But ought onely to serve for the grinding of corne that shall be brought to their Mills.

Measures of wine, Beere, and Ale, &c.

Wine } their mea- } Rondlet, 16. & di.
 Oyle, and } sure is all } Barrell, 32. & di.
 Honey: } one, *sc.* the } Hoghead, 63. gallons.
 } } Pipe, 126.
 } } Tunne: 252.

Yet for honey the assise is altered to 32. wine gallons the barrell, 16 gallons the kilderkin, &c. 23. *El. 8. P. Wax. 6.*

Beere, the measure thereof, } Firkin, 9.
 is as followeth, *sc.* the } Kilderkin, 18. } gallons.
 } } Barrell, 36.

And so Beere measure containeth in the barrell foure gallons more than Wine, or any other vessell.

Ale, the measure thereof is } Firkin, 8.
 as followeth, *sc.* the } Kilderkin, 16. } gallons.
 } } Barrell, 32.

No Cooper shall make any other vessell for beere, or ale, to bee sold, within this Realme, of any greater, or lesser number of gallons than is aforesaid; unlesse he shall cause to be marked upon every such vessell, (of greater, or lesser number of gallons) the true and certaine number how many gallons every such other vessell shall containe. 23. *H. 8. c. 4.*

Also no brewer of beere or ale, shall put the beere or ale to sale, to be spent within this Realme, in any other barrels, kilderkins, firkins, or other vessells of wood, other than shall be marked by a Cooper, and whereof every vessell shall containe and hold the number of gallons aforesaid, of full and just measure, or above, and not under that measure, *ibid.*

The Wardens of Coopers in all cities, and boroughs, where there be such Wardens; and in all other boroughs and townes, the Major, Sherifes, Bailifes, Constables, or other head officers, may search and gage all such vessells, (made in such citie or towne) whether they beare their true contents, as aforesaid; and if they find any vessell defective, they may make or amend the same according to the true content, or else may cause the same to be burned. *ibid.*

It appeareth by M. *Crompt.* that it was agreed by the Justices, that the measure of wine and ale should be all one: but now by the statute of 1 *Iac. 9.* Ale, and beere, shall be sold by retaile by one and the same measure, *sc.* by the ale quart.

And for the prices of all vessells of ale and beere, by the stat. 23. *H. 8. cap. 4.* any two Justices of peace might assesse the prices thereof. And that no brewer shall take for any barrel, kilderkin, or firkin, &c. of ale or beere, but after such prices and rates as shall be assessed by the said Justices of peace in the Countrey, or by the Major or their head officers in corporate townes &c. But now by the statute 8. *Eliz. cap. 9.* the assessement of the prices thereof by the Justices, shall bee by the Justices or the moe part of them being present at the Easter quarter Sessions, and onely of such vessells as shall bee made or sold out of cities or corporate townes

^{H. 8. 4.}
^{sope 1.} Sope, the barrell, halfe barrell, and firkin, shall bee of the same content that ale is, *sc.* the barrell, 32 gallons or above, and the emptie vessell not to bee in weight above 26 pound, the empty firkin not to weigh above 6 pound and an halfe; and to containe 8 gallons or above of full and just measure,

Butter also shall be of the same measure that sope is of.

^{weights 6} Cheese; A weigh of cheese must containe 32 cloves, and every clove 8 l. of averdepois weight: although the statute 9. H. 6. 8. *Rast.* 28. *diu.* and the booke of assise imprinted 1597. seeme to make 7. l. to be a clove. And yet by the booke of assise, the weigh of Suff. cheese must containe 256. l. or 12 score and 16 pound of averdepois weight: (and their barrell of butter is of like weight with the foist:) But the weigh of Essex cheese or butter, is 300. l. weight, after the rate of five score and xii. li. to the hundred, which is 336. l. or 16. score and 16. pounds, of averdepois weight.

^{Butter.}
^{Cheese.}

Beefe and other flesh are 16. ounces averdepois to the pound, and 8 of *Fish.* them pounds to make the stone; except where the usage of the countrie require more pounds to the stone, *Booke of Assise.*

Herring, the barrell, halfe barrell, and firkin, shall be the same content that ale is, *sc.* the barrell 32 gallons, &c. 11. H. 7. c. 23. & 13. *El.* 11. P. *Fish* 9.

Also Herrings are sold by taile, *sc.* six score herrings shall goe to the hundred, ten hundred to the thousand, and ten thousand to the Last, 31. *E. 3. cap. 2.*

Salmon and Eeles: see the contents of their vessels *Stat.* 11. H. 7. *cap.* 23. P. *Fish.* 8. 10.

^{Wool.} Wooll, 14 pound weight goeth to the stone of wooll, 28 pounds goeth to the Tod, and 26 stone goeth to the sacke, 11. H. 7. 4. P. 331. *Ed.* 3. *cap.* 8.

Hemp, 20. li. weight maketh the stone, P. *Cables* 2. 21. H. 8. *cap.* 12.

Sugar, spices, and wax, 8. li. maketh the stone: & 13 stone and a halfe, or 108. li. maketh the hundred: see the *Stat. de Compos. ponder. Rast.* *Weights* 8.

Hops, five score and twelve pounds maketh the hundred.

Lead, the content of the pound, the stone, and the load: see *Rastall,* *weights* 8.

Leather, the content of the dicker, and the last: see *Rast. weights*, 8.

The contents of yron, glasse, linnen cloth, and divers other things: see the *stat. de Compos. ponder. Rast.* 8.

All other commodities of tale, or number, are sold by the hundred,

Cartell, and fish, are sold six score to the hundred: and yet the hundred of hard fish must containe eight score. *Rast.* 8.

whereof Also all other headed things, as nailes, pins, &c. are sold six score to the hundred.

All other things have but five score to the hundred.

^{Fuel.} For the assise of fuell, *sc.* of cole, talwood, billet, and fagot, see the *stat. Fuel.* of 7. *Ed.* 6. 7. 43. *El.* 14. A sacke of coles is foure bushels.

Timber well hewen, and perfectly squared, fifty foot thereof maketh the load.

Lash shall containe in length 5 foote, in breadth two inches, and in thicknesse halfe an inch.

Tyle, six score goe to the hundred: as for the assise thereof, (sc. the length, breadth, and thicknesse thereof.) See the stat. 17. Ed. 4. cap. 17. P. Tyle 2.

A bale of paper, is ten reame; a reame is twenty quires; a quire is 25 sheetes.

A roule of parchment is five dozen, or sixtie skins.

Measures
of Length.
Tuch.
Handfull.
Foot.
Yard.
Ell.

Three barley cornes measured from end to end (or 4 in thicknesse) maketh one inch.

Four inches maketh an handfull, 27. H. 8. 6.

Twelve inches make a foot.

Three foot make a yard.

Three foot and nine inches make an Ell.

Pace.
Fadome.
Pole.

Five foot doe make a Geometrical Pace.

Seven foot maketh a fadome.

Five yards and an halfe (which is 16 foot and an halfe) maketh a pole; rood, or perch, *ibid.*

And yet by the usage of many countries, the pole doth vary; for in some places it is 18 foot, and in some places 21 foot, and in other places 24 foot goeth to the pole: and there if a man shall sell a certaine number of acres of wood, &c. it shall be measured according to the usage of the country there, and not according to this statute; for herein *Consuetudo loci est observanda*. See *Crompt. des courts. fol. 223. & 222.*

The same reason may seeme to hold of measures of corne by the bushell, see a little before.

Master Osborne writeth that the measure of 18 foot to the perch (or pole) is commonly cald woodland measure: 21 foot to the pole is called Church measure, (sc. of land which now doth, or formerly did belong to the Church;) and 24 foot to the pole is called (and that rightly) Forrest measure.

Note that the Clarke of the Market may enquire of the pole, or perch, whereby land is measured, as well as of other measures. *Crompt. Author. des Courts. 221.* but the Justices of peace are not to meddle therewith, especially out of their Sessions.

Also note that no measure shall bee sealed but the bushell, halfe bushell, peck, gallon, pottle, quart, and pinte, *Crompt. fol. 222. tamen quare.*

Furlong.
Mile.

Fortie pole in length maketh a furlong.

Eight furlongs (or 320 pole) maketh an English mile.

Note that our English mile contains 280 foot more than the Italian mile; the Italian mile being of 1000 paces, and five foot to a pace, and so the Italian mile is in length 5000 foot, whereas the English mile is 5280 foot in length; 1760 yards.

Acre.

Forty pole in length, and foure in breadth (or 160 pole) doe make an acre, *P. vobis Stat. Compote. glaucum. & Stat. 34. Ed. 1.*

Plow-land.

And (by the opinions of M. Camden fol. 339. and Hollingshed, p. 13. cap. 11. impress. 1586) one hundred acres is an hide of land; but yet it seemeth that a hide of land (or plow-land, or carve of land, which are all one) are not of any certaine content, See hereof before, *in Highwaies.*

A yard-land containeth in some places more, in some other lesse.

And yet M. Norden in his surveyors Dialogue, pag. 59. saith, That every plow-land containeth commonly 120 acres : and that every plow-land is 4 yard land (in latin called *quatrone terra*) every yard-land containeth thirtie acres : And yet after some computation, every yard-land containeth but 24 acres : and this is the common account with us on the East part of Cambridge-shire.

Now that I have set you downe the contents of most weights and measures, you must further observe :

First, that in every county (*sc.* in the principall or shire towne there) there are (or ought to be) standards of brasle for weights and measures, (*sc.* for the bushell and gallon) according to the Kings standard of his Exchequer, there to remaine with the chiefe officers of the same towne ; according to which, every citie, borough, and market towne within the same county, ought to make them common weights and measures, to be marked by him that keepeth the standard.

Also in every citie, borough, and market towne, there ought to bee a common ballance, and a common bushell, and weights sealed, and according to the standard in their shire towne (as aforesaid,) upon paine to every citie x. li. to every borough 5. li. and to every market towne xl. s. for their defaults.

Also no man within any citie or market towne, ought to buy or sell with any weights or measures, except they bee sealed and marked in forme aforesaid (*sc.* according to the Kings standard, and by the officers in whose possession the Kings standard remaineth :) nor any other person out of a market towne, except their weights and measures bee like and equall with the standard. See *Rast. fol. 531. ca. diu. 33.*

And yet it seemeth by the statutes 31. Ed. 1. & 8. H. 6. 5. (*Rast. diu. 3. & 26.*) that no man (though out of a market towne) shall use weights or measures, nor other thing in the place of weight or measure, that is not sealed, according to the Kings standard, upon paine to forfeit the value of the goods weighed or measured, and two yeares imprisonment, and to be fined and ransomed, and yeeld *quatreble* damages. See *Rast. tit. weights, & Crompt. 94. & stat. incerti temporis, ca. 8. Poulton, stat. at large, pag. 112.*

The officer that keepeth the standard (in the shire towne) shall marke and seale other weights and measures, to all other the Kings subjects that shall require it ; and they shall take for the marking of the bushell but 1. d. and for all other measures but an halfe penie ; and for weights, for every hundred weight 1. d. and for halfe an hundred weight an halfe penie. and for every weight under, but a farthing.



Now follow the names of the principall
Townes in every Shire (or Countie) appointed to have the
*keeping of Standards for the weights and measures,
according to these Statutes.*

Bedfordshire, towne of Bedford.
Barksh. the towne of Reading.
Bristol, the same towne.
Buck. the towne of Buckingham.
Camb. the Universitie of Camb.
Chesh. the city of Chester.
Cornw. the towne of Lustudiell.
Cumber. the city of Carlisle.
Derb. the towne of Derby.
Devon, the citie of Excester.
Dorf. the towne of Dorchester.
Essex, the towne of Chelmesford.
Gloc. the towne of Gloucester.
Hampsh. the citie of Winchester.
Hertf. the towne of Hertford.
Heref. the towne of Hereford.
Hunt. the towne of Huntingdon.
Kent, the towne of Maidstone.
Lanc. the towne of Lancaster.
Leic. the towne of Leicester.
Linc. the citie of Lincolne.

London, the same citie.
Middl'. the citie of Westminster.
Norff. the citie of Norwich.
North. the towne of Northampton.
Northum. the towne of New-castle.
Notting. the towne of Nottingham.
Oxford, the Universitie of Oxford.
Rutl. the towne of Vppingham.
Shropsh. the towne of Shrewsbury.
Sink-Ports, the castle of Dover.
Staff. the towne of Stafford.
Somerf. the towne of Ilchester.
Southampton, the same towne.
Suff. S. *Edmonds* Burie.
Surr. the towne of Guilford.
Suffex, the towne of Lewes.
Warr. the towne of Coventrie.
Westmor. the towne of Appulbie.
Wiltsh. the citie of Salisbury.
Worc. the citie of Worcester.
Yorksh. the cittie of Yorke.

Stat. 11. H. 7. cap. 4.

LEVIT. 19. 35, 36.

*Ye shall not doe unjustly in judgement, inline, in weight, or in measure: ye
shall have just ballances, and true weights.*

PROV. 11. 1. & 20. 20.

False Ballances, or divers Measures, are all an abomination unto the Lord.

Here

Here also I will give a short view of such particular and private statutes (made onely for some particular Shires, CITIES, or Townes) as doe give some power also

*unto two (or more) Iustices of peace
out of their Sessions.*

CHAP. 66.

For paving of Aldgate street. 13. *El.* 23. & 23. *Eli.* 11.

For the repairing of Cardiff Bridge, 23. *El.* 11.

For Justices of peace in Cheshire, &c. 27. *H.* 8. 5.

For repairing of Chepstow bridge, 3. *Iac.* 23.

For Chichester Haven, 27. *El.* 22.

For paving Drurie Lane neere London, 3. *Iac.* 22.

See more here before, *titulo London.*

For repairing the High-way at Non-such 3. *Iac.* 19.

For recoverie of marsh ground in Norff. and Suff. 7. *Iac.* 20.

For making Coverlet, and Dornicks there, 5. *Ed.* 6. 24.

For Recognisances to be taken of Lessees in Northumberland.

*Aldgate.
Cardiff.*

*Cheshire.
Chepstow.
Chichester.*

*London.
Norwich.
Norfolk.
Suffolke.
Norwich.*

Northumb.

11. *H.* 7. 9.

For amending bridges within five miles thereof, 18. *El.* 20.

For making the river of Thames navigable to Oxford, &c. 21. *Ia.* 32. *Oxford.*

For repairing a ferrey in the Isle of Shepey : See 18. *El.* 10. & 27.

Shepey.

Eliz. 26.

For laying out new High-ways in Suffex and Kent, 14. *H.* 8. 6.

*Suffex.
Kent.*

26. *H.* 8. 7.

See before, *tit. Purveyors.*

For repaire of Upton bridge, 3. *Iac.* 24.

For wages of the Knights of Parliament in wales. 35. *H.* 8. 11.

*Universities.
Wilton.*

For establishing Justices of peace in Wales, 34. *H.* 8.

*Wales.
Wilton.*

For making of the bridge at Wilton over Wye, in the countie of Hereford, 39. *El.* 24.

Thus much concerning such statutes as the Justices of peace, out of their sessions of the peace are to meddle withall.

Now for a conclusion of these statutes and of the services of the Justices of P. therein, I wish them that in all cases where the whole matter is (by the statute) committed to the Justices of peace (to one alone, or to two Justices, or more) out of their sessions, to heare and determine, &c. as where, upon his or their owne view, or by confession of the offender, or upon examination and prooffe of witnesses; (and without any indictment found or preferred) they may commit, or punish an offender as convict by such view, confession, or examination and prooffe; as also where they may proceed by enquire and inditement; that in every such case of such their judiciall proceeding, they bee led by no affection, but advisedly to examine and consider of, as well the fact it selfe, as of

of the circumstances, and then (in the feare of God, and according to law) to proceed and to see, or cause due and diligent execution of the punishment to be done upon the offenders, according to the quality and quantitie of their offence, and as the statutes themselves doe direct; for law without due execution and punishment of the offenders, is as a sheathed sword without any use or profit.

But in all cases where the Justices of P. have power to heare and determine out of their sessions (sc. upon their owne view, or upon the confession of the offender, or upon proove of witnesses) if upon such conviction the offender be to be committed to the gaole, the Justices of P. ought to make a Record in writing under their hands, of all the matter, and of the proofes, &c. which Record notwithstanding in many cases they may keepe by them, &c.

Also if upon such conviction the offender be to be fined to the King, then the Justices of Peace are to estreat such fine, and to deliver, or send the estreat into the Exchequer, whereby the Barons of the Exchequer may cause the sayd fine (or forfeiture) to be levied to the Kings use.

And here I will shortly point you out some particular offences, which by the statutes are referred to the Iustices of peace to heare and determine (out of their sessions) as aforesaid, and will leave the rest to your owne search.

1 Some particulars where one Justice of peace upon his owne view, or *One Justice.* hearing (of the offence) may punish the offenders.

Alehousekeepers, &c. suffering townesmen, or any other person, to continue drinking in their houses contrarie to the statute, 1. *Iac. cap. 9. & 21. Iac. 7. vide antea tit. Alehouses.*

Townesmen, or strangers tipling in Alehouses, &c. contrary to the statute 4. *Ia. cap. 5. & 21. Iac. cap. 7. ibidem.*

Persons that shall ride, or goe armed, contrary to the statute, 2. *E. 3. ca. 5. Vide antea tit. Armor.*

Persons that shall have any Teinters, &c. for the deceitfull stretching of cloth, *Vide antea tit. Cloth.*

Offenders in Forcible Entries, or detainers, contrary to the statutes: see *antea tit. Forcible Entry.*

Keepers of places for unlawfull gaming, *Antea tit. Games unlawfull.*

Players in such places, *ibid.*

Players at unlawfull games wheresoever contrary to the statutes, see as before.

Swearing prophanely, or cursing, in the hearing of any Justice of peace, &c. *Antea tit. Swearing.*

2 Where one Justice of peace may punish offenders as convict upon their owne confession.

Alehousekeepers, Inkeepers, or Victuallers, suffering townesmen, or strangers, to continue or be tipling in their houses, &c. see *Antea tit. Alehouses.*

Townesmen, or strangers, continuing tipling in any Inne, Alehouse, or Victualling house, see *ibidem.*

Sherifs, &c. entring plaits *in* their courts unduly, *V. antea tit. Sherifes.*
Persons

Persons not repairing every Sunday to Church, see *antea tit. Recusants.*

Prophane swearers, or cursers, *hic antea tit. Swearing.*

Trespassers in Corne, Orchards, or Woods, &c. contrary to the stat.

43. *El. 7. Vide antea tit. Trespasse.*

Offences in Tyle making, contrarie to the stat. *Vide antea Tyle.*

Offences in Watermen, contrary to the stat. *Vide antea Watermen.*

3 Where one Justice of peace may punish offenders as convict upon examination, and oath of witnesses.

Alehousekeepers, &c. suffering townesmen or strangers to be tipling in their houses contrary to the stat. *1. Ia. & 21. Ia. V. antea tit. Alehouses.*

Alehousekeepers, &c. selling lesse beere, or ale, than according to the statute *1. Ia. ibid.*

Townesmen, or strangers, tipling in Alehouses, &c. contrary to the stat. *4. Ia. cap. 5. ibid.*

Persons not repairing every Sunday to Church, they may bee convicted upon the oath of one witnesse, *Vide antea tit. Recusants.*

Prophane swearers, or cursers, *hic antea tit. Swearing.*

Transporters of corne, &c. *Vide antea tit. Transportation.*

Trespassers in corne, orchards, or woods, &c. they also may bee convicted upon the oath of one witnesse, *Vide antea tit. Trespasse.*

And yet here, and in all cases of conviction upon the oath of witnesses, the offender himselfe must also be heard speake, and be examined by the Justice of peace, &c. Or else it is no lawfull conviction, see *hic cap. 7. & hic infr.*

4 Where one Justice of peace may punish offenders, as convict upon examination generally, the statutes not shewing what persons shall bee examined; in which cases it seemeth the Justice of P. may thereupon examine as well the offenders themselves, as other witnesses.

The defaults of the Collectors of the Sherifes americiaments: as also of Bailifes of hundreds, *Vide antea tit. Sherifes.*

Offences in tyle making, *Vide antea tit. Tyle.*

Offences in Watermen, *Vide antea tit. watermen.*

5 Where one Justice of peace may punish offenders, upon accusation or prooffe, generally; which accusation, or prooffe, must be by examination of witnesses onely (as it seemeth.) And yet the party delinquent is (here also) to bee first heard, before hee bee convicted or condemned, *ut supra.*

Offenders in keeping, or using guns, or crosse-bowes, &c. contrary to the stat. *Vide antea tit. Guns.*

Disturbers of Preachers, *Vide antea tit. Preachers.*

Souldiers that have purloyned their horse or harneis, *V. antea. tit. Sould.*

Note, that in these former cases, and in all other cases where the Just. of peace is to take such examination of witnesses, or such other accusation or prooffe, aforesaid, though the stat. doth not expressly set downe that it shall be upon oath, yet it seemeth fit, that the Just. doth it upon oath: for M. Brooke (sometimes chiefe Just. of the common Pleas) was of opinion that every examination ought to be upon oath: & M. Lamb.

517. was also of opinion, that these examinations taken by the Justices of P. ought alwaies to be upon oath, the rather because the triall in these cases dependeth wholly upon these examinations; yea in all other cases wheresoever any man is authorized to examine witnesses, such authority to examine shall be taken and construed to be in such manner as the Law will, which is only by oath. *Vi. posse tit. Examination, cap. 3.*

Also where the matter is to be tried by witnesses onely, it is fit there be two witnesses at the least (except where the stat. doth expressly allow the oath or testimony of one witness.) And so was the opinion of M. Brooke, that in such case there ought to be two witnesses at the least; and agreeable thereto also is the Booke and word of God, *Matth. 18. 16. 2. Cor. 13. 1. Plo. 12. a.* Otherwise it is, where the triall is by a jury of 12. men, there one witness sufficeth, yea there many times witnesses are not necessary, see *Plo. P. f. 12. a. & hic cap. 3.*

Two Just.

Where two Just. of peace (out of their Sessions for the peace) may punish offenders as convict before them, upon the confession of the offender, or upon examination of witnesses, or upon their owne view.

Clothiers refusing to pay the wages assessed, &c. see *antea tit. Cloth.*

Spinsters, &c. which shall imbesill any part of their wooll contrary to the statute 7. *Iac. 7.* (upon proove of one witness.)

Clothiers making deceivable woollen cloth. 21. *Iac. ca. 18. hic. ant. tit. Cloth.*

Servants or laborers assaulting their master, see *antea, tit. Laborers P. 12.*

Servants departing, refusing to serve, or taking excessive wages, &c. see *tit. Labourers, P. 4, 6, 14.*

Persons restrained from mauling, &c. see *antea tit. Maul.*

Destroyers of partridges, or other fowle, or of their eggs, or of hares, or keeping hunting dogs contrary to the sta. 1. *Ia. 27.* see *antea tit. Partrid.*

Destroyers of fessants or partridges, contrary to the stat. 7. *Iac. 11.* upon proove of one witness, *ibid.*

Such as shall put out of their parish (as poore persons) those that bee not to be put out, *Vide antea tit. Poore.*

Also the defaults of the Overseers of the poore, *ibidem.*

Disturbers of Preachers, *Vide antea tit. Preachers.*

Offenders which shall disturbe the execution of the stat. for rogues; & officers which shall be remisse or negligent therein, &c. *V. an. tit. Rogues.*

The defaults of officers and others, touching weights and measures, *Vide antea tit. Weights.*

But note, that this manner of triall by examination of the offenders or witnesses, is not permitted to Justices of P. but onely in cases where either the statutes doe generally refer the triall to their discretions, or else doe specially authorize them to take the examinations.

And in all these former cases, where the Justices may heare and determine, or may punish offenders as convict upon their owne confession, or upon examination of witnesses (it seemeth in congruities) the Justices of peace may grant out their Warrants against such offenders, (or at least ought to send for them) to appeare before them to answer to their sayd offences: & thereupon may proceed to examine, heare, & determine the offences.

Where

Where one or two Justices of P. may heare, and determine, by inquiry and indictment taken before them, out of their generall sessions as it seemeth.

Defaultes of sherifes and bailifes, in not returning sufficient jurors to inquire of Forcible Entries, *Vide antea tit. Forcible Entry.*

Offendors in Riots, *Vide antea tit. Riot.*

Transporters of come, &c. *Vide antea tit. Transportation.*

Offences committed in Tyle making, *Vide antea tit. Tyle.*

Defaults as well of officers, as of buyers, and sellers, with unlawfull weights or measures, *Vide tit. weights, &c.*

And in these cases, the offence being found upon such Enquiry, these Justices have authoritie not onely to make out proces against the offenders, under their owne *Teste*, but also to fine them, and to commit the offenders to prison till they have payd their fine, and to deliver them upon payment of the same, or upon sureties given for it: or otherwise (it seemeth) the Justices may receive the traverse of the offenders, &c. for to all these effects, the words (in those statutes) Heare and Determine, doe seeme to leade and inable the said Justices.

Also in these cases, the Justices Precept to the sherife, to returne a Jurie before them, may bee in this or the like forme: and either in the Kings name, or under the name of the Justices, &c.

Iacobus Dei grat' Rex Anglia, &c. vicecom' Cantabr. salutem. Præcipimus tibi quod non omittas propter aliquam libertatem Comit' tui, quin. venire fac' coram Iustic' nr's de pace in comitat' præd. conservand' assign' apud Linton in Comit' præd' die Iulii proximi sequenti 24 probos & legales homines de Hundred de Radfield & Chilford ad audiend' & faciend' ea quæ, eis ex parte nostra ibidem tunc fuerit injungend'. Et habeas tunc & ibidem hoc mandatum. Teste Mi. D. (apud Westwratting) tali die, &c.

Suretie for the Peace. CHAP. 67.

Suretie for the peace, is the acknowledging of a Recognisance (or bond) to the King (taken by a competent Judge of Record) for the keeping of the peace: and it is called suretie, of the word *Securitas*, because the party that was in feare, is thereby the more secure and safe.

This surety for the peace, every Justice of peace may take and command in two manners, or by a twofold authoritie.

1 First, as a minister (commanded thereto by a higher authoritie) as when a Writ of *Supplicavit*, directed out of the Chancery, or Kings Bench, is delivered to his hands: upon this writ that Just. of P. only (to whom such Writ is delivered) is to direct his Warrant to cause the partie to be brought before him (alone) to find sureties for the peace. And therein the said Justice is to doe in every behalfe, according as the same Writ doth direct him.

See more concerning this Writ of *Supplicavit*, &c. *postea sub hoc tit. Suretie for the peace. cap. 73.*

2 Secondly, as a Judge, (and by vertue of his office, and of his owne power derived from his Commission) he may command this suretie of the peace to be found; and that either of his owne motion and discretion, or else at the request or prayer of another.

Upon discretion.

The Justice of peace upon his owne motion and discretion, may (if he see cause) command surety of the peace to be found, or may binde a man to the peace (and that against all the kings subjects, if the Justice shall so thinke meet) in these cases following.

1 One that maketh an assault, or affray, upon the Just. of P. himselfe, the Justice may cause or command him to be arrested or attached, and carried presently before another Justice of P. who may commit him to prison, till hee hath found sureties for the peace. *Vide hic cap. 120.*

2 Such as in his presence shall make an affray upon another, or shall strike, or assault, or offer to strike another, the Justice may commit him, to prison, untill he hath found sureties for the peace. *Vide antea tit. Affray. & Br. fx. impris. 12.*

3 So of such as in his presence and hearing, shall threaten to kill, beat or hurt another, or to burne his house.

4 So of such as in his presence, shall contend onely in hot words; for from thence oftentimes doe ensue Affraies and batteries, and sometimes maimes, yea manslaughters and murders.

5 So of such as in his presence shall goe or ride, armed offensively, or with an unusuall number of servants or attendants: for these are accounted to be an affray and feare of the people, and a means of the breach of the peace: so of servants and labourers, that shall beare any weapons, contrary to the statute of 12. R. 2. *Vide antea tit. Armor.*

6 Also he may binde to the peace any other person, to him suspected to be inclined to the breach of the peace.

7 If (out of the presence of the Justice of P.) any man shall threaten to kill, maim, or beate another, or doe attempt, or goe about to doe it: then any Constable being present may arrest such offendor, to come before a Justice of peace to finde sureties for the peace: and the Justice may binde him to the peace.

8 If any Constable shall perceive any other persons in his presence to be about to breake the peace, either by drawing weapons, or by striking, or assaulting one another, or by assaulting the Constable himselfe; he may take assistance, and carry them all before the Justice to finde sureties for the peace, and the Justice may binde them.

9 If the Constable shall learne that certaine persons bee fighting or quarrelling in a house, he may breake open the doores and arrest them, and carry them before a Justice of peace to finde suretie of the peace: and the Justice may binde them.

10 Yea, the Justice of peace (either upon his owne discretion, or upon any mans complaint) may make his warrant, for any such as have made an affray (though out of his presence) and may binde them to the peace. *Vide antea tit. Affray.*

11 If one hath received a wound, it seemeth the Justice of peace may take suretie of the peace of the one and the other, (by his discretion) untill the wound be cured and the malice be over. *Popham* late Lord chiefe Ju. of England (an honorable and grave Judge) did accordingly betweene *JAMES* and *BENSON* at Cambridge Assises, 3. Jac.

12 All such as shall goe or ride armed (offensively) in Faires, Markets, or

or else where; or shall weare or carry any guns, dags, or pistols charged; it seemeth any Constable seeing this, may arrest them, and may carrie them before the Ju. of P. & the Just. may binde them to the P. yea though those persons were so armed or weaponed for their defence upon my private quarrell &c. for they might have had the peace against the other persons: and besides, it striketh a feare and terror into the Kings subjects.

See more *hic ante tit. Affray and Armor.*

13 Also the Justice of peace (upon his discretion) may binde to the peace a common Barreter. *Vide tit. Barreter.*

14 So of Ryotters. *Vide tit. Ryotters, & Lamb. 79.*

15 He that standeth bound to keepe the peace, if he hath broken (or forfeited) his Recognisance, the Justices of peace may and ought of discretion to binde him anew; but yet by good opinions, that must not be done untill the party be convicted of the breach of the peace, upon his Recognisance; for before his conviction, it resteth indifferent whether the Recognisance bee forfeited or no: But after that he is thereof convicted, & that the forfeiture be levied, the Recognisance is then utterly determind; & then he is to be compelled to find new surety, or else to be sent to the Gaole.

So it seemeth, though the forfeiture bee not levied, yet if the party be convict for breaking the peace, hee shall be bound of new. *Crompt. 141. & Br. Recog. 21.*

16 Also he that standeth bound to keepe the peace, if his sureties be insufficient, the same Justice, or another Just. of the peace may compell him to find better sureties.

And in many of the former cases, the Justice of peace ought (of duty, or at least in good discretion) to command this surety for the peace although the same be not required by any other person: And if any such person shall refuse to give such surety, the Just. of peace ought to send him to prison, there to remaine untill he shall find such suretie.

If a Justice of peace (upon his owne discretion) shall cause one to bee arrested to find sureties for the peace, and shall after let him goe without taking suretie, or binding him to the peace, yet the party hath no remedie: for an action will not lye against the Justice of P. for this, he being a Judge of record. See *9.H.6.f.60. & 9.E.4.f.3 Br. Judges 2.10. & Br.f.x.imp. 12. & hic cap. 46. & 120.*

A Justice of peace may perswade a man to require the surety of peace against another, and he himselfe may grant a warrant for it, because it is no more than he might have granted of his owne authoritie, without any demand made; & it shall be presumed that hee saw cause to doe all this.

Also at the request or prayer of another, the Justice of peace may command this suretie of the peace, and may grant his warrant for it.

But here the Just. of P. must and ought first to take an oath of the party that demandeth the peace; which oath must be to this purpose, *sc.* That he standeth in feare of his life, or of some bodily hurt to be done to himselfe, or to have his houses burned, (and that hee doth not crave the peace for any private malice, or for vexation, but of very feare, and for the needfull safety of his body, or houses;) for the words of the Commission herein are, *Es ad omnes illos qui alicui, vel aliquibus de populo*

nostro, de corporibus suis, vel de incendio domorum suarum, minas fecerint, ad sufficientem securitatem de pace, &c. inveniendam, &c.

So he that shall be threatned to be hurt in his body (se. to be beaten, wounded, maimed, or killed) the party so threatned may crave, and have the surety of peace against the other, & it is to be granted properly in such cases.

Also if a man doe feare that another will kill, maim, beate, assault, or hurt him in body, he may crave the peace against such other person.

So if a man doe feare that another will burne his house.

So if a man doe feare that A. will procure or cause any such hurt to be done him by another, either in his body, or in his houses; for the words of the Recognizance be, *Non faciet, nec fieri procurabit.*

So if a man lieth in wait to beate, kill, or hurt another, it is good cause to require this surety, *Crompt. 135.*

Vnc nota les parolz deus in le Commission, Minas fecerint &c. per quex parolz, seë que per le Commission, le peace nee deë grant sur aucun request, ne auterment Sinon tantum lou home est manassé. et pur ceo lou A. craved le peace versus B. pur ceo que B. usa de vaer ove un Pistol, et le Iustice. de p. sur ceo granted le peace, Sir Nich. Hyde blamed le Iustice, disant que il ne devoit aver lye B. a le peace, pur ceo que il n'ad manassé A.

If a man be threatned to have his goods burned, it seemeth by the opinion of M. Fitz. that hee may demaund surety of the peace for this: *quare tamen*, because he may recover his goods, or damages for, and to the value of the same, *Col. 255.*

And where a man shall threaten to imprison another, it is holden that the peace shall not be granted; for that the party wronged may have his action of false imprisonment, or a writ *de Homine Replegiend'*, and so shall recover damages for his imprisonment.

Yet inquire hereof; for to threaten imprisonment is within the words *Minas de corporibus*: and like harme may happen to a man by hard imprisonment, as by cruell beating of him: And to threaten imprisonment is a cause to avoid a deed or bond, as well as to threaten to kill, or maim one, &c. *39. H. 6. Br. Dureff. 9. vide Col. 253.*

Where a man is in feare, that another will hurt his servants, or his cattell, or other goods, this surety of the peace shall not bee granted by the Just. of peace: But in this case M. Fitz. saith, the party may have a speciall Writ out of the Chancery directed to the sherife, that he shall cause such person to find surety, that he shall doe no hurt or damage to the other man in his body, or to his servants, or goods. And if hee will not find surety, that then he shall arrest and detaine him in prison, untill hee shall find surety: and that the sherife shall certifie all that hee shall doe thereupon, into the Chancery, &c. And it seemeth the sherife ought to take such surety, by Recognizance. And yet it if a man shall threaten to hurt my servant, or my wife, or child, I see no cause but that in their behalfe I may crave the peace at the Just. hands, by the words of the Commission, and that the Justice ought to grant it.

If a man will require the peace because hee is at variance, or in suite with his neighbour, it shall not be granted by the Justice of peace.

Note also, the surety for the peace shall not bee granted but where
there

there is a feare of some present or future danger, and not merely for a Battery, ^{Br. Famp.} or trespassse that is past, or for any breach of the peace that is past: for this ^{I.R. 14.} surety of the peace is onely for the security of such as are in feare. Now *Metus, est presentis vel futuri periculi causa mentis trepidatio*: And so this surety is, *providere presentia, & futura, & non praterita.*

And as for a battery, or other like Trespassse that is past, the party wronged may have his action of Trespassse of battery, &c. or may punish the offender by indictment at the Kings suit: and yet in such case the Justice may (if he see cause) binde over the affrayor. *Vide antea.*

If the Justice of P. shall perceive that this surety for the peace is demanded merely of malice, or for vexation only, without any just cause of feare, it seemeth he may safely deny it. As in common experience we find it, That where *A.* shall upon just cause come and crave the peace against *B.* and hath it granted to him; when *B.* shall come before the Just. *B.* likewise will crave the peace against *A.* (and will perhaps surmise some cause) but yet will neverthelesse be content to surcease his suit & demand against *A.* so as *A.* will relinquish to have the peace against him; here the Justice of P. shall doe well (as I thinke) not to be too forward in granting the P. thus required by *B.* but to perswade with him, and to shew him the danger of his oath which hee is to take; but yet if *B.* will not be perswaded, but will take his oath that he is in feare (where indeed he neither doth feare, nor hath cause to feare) this oath shall discharge the Justice, and the fault shall remaine upon such complainant.

And when the Justice hath so granted the peace to one that (in the Justices judgement) shall crave or require it only out of malice, or for vexation, the Just. may presently in good discretion binde him to the good behaviour, that so required the peace.

For whom, and against whom this suretie of the Peace shall be granted. CHAP. 68.

THe Law hath conceived such an opinion of the peaceable disposition of Noblemen, that it hath beene thought enough to take one of their ^{Noblemen.} promises upon his Honor, that he would not breake the P. against a man. *Br. Consempts 6.24.E.3.3. & 17.E.4.4.*

And therefore if a man shall have cause to have the surety of the P. against a Lord of the Parliament, or such great and noble personage, he shall not have a warrant from the Justices of P. to that purpose; nor yet have a *Supplicavit* out of the Chancery, directed to the Just. of P. therefore: but if there be cause, he may have a *Subpoena* out of the Chancery (of common right, as it seemeth) and there such Lord or Nobleman shall be bound to the P. And yet if such Lord will not appeare upon the *Subpoena* served, *quere*, if an Attachment will lie against him upon such his default. *M. Cromf. 134.b.* saith that it was holden in the case of the *L. Cromwell*, in the Chancery, about 18. *El.* That an attachment lieth not against a Lord where he maketh default upon a *Subpoena* against him out of the Chancery, *Dier 315.* seemeth to accord.

But though it be true that the person of a Baron (who is a Peere of the Parliament) shall not be arrested (for or in cases of debt, or trespassse, &c.)

11. H. 4. 13.
Br. Repl. 19
Co. 9. 49.

Fitz. Subp.
20

F. N. B. 79.
8.

Crom. 134.

Co. 4. 53. 53.
20. H. 6. c. 9.
Stat. 152.
153.

Co. libid.

96. H. 6. 23.
Br. Moigne.
14 & 15.

by his body, first in respect of their dignitie, secondly in respect that the law presumeth that they have sufficient lands and tenements wherein they may bee distrained, yet in cases of contempt it seemeth they may be arrested by *Capias*, or Attachment, &c. *V. 27. H. 8. f. 22. b.* Or else (it seemeth) that the party may crave the peace in the Chancery, against such Lord or Peere (*sc.* to have a *Supplicavit* directed to the sherife) and then the sherife may and ought to execute the same: and if the sherife shall not doe his office therein, an *Alias Plur.* and attachment lieth against him. And if the sherife shall returne, That such Lord is so puissant that he cannot arrest him; upon such returne the sherife shall be grievously amerced (for he might have taken *Posse comitatus*, *sc.* he might have levied 300 men by his discretion, if there had beene need, to have aided him in such case.) And if such Lord or Peere who is by the sherife so arrested, shall refuse to obey the arrest, & shall make a *Rescous*, whereupon the sherife shall returne a *Rescous*, hereupon shall there be an Attachment granted out against such Lord, to arrest and take his body for such his contempt.

The same law & remedy seemeth to be where a man hath cause to have the surety of the Peace against a Duchesse, Countesse, or Baronesse; for they are Peeres of the Realme, and shall be tried by their Peeres, although in respect of their sex they cannot sit in Parliament: and they are in the same degree (as concerning their Nobility, and the privileges incident to their dignities) with Dukes, Earles, and Barons. But here note this diversitie, *sc.* if such woman being a Countesse, or Baronesse, &c. by marriage only, shall marry againe under the degree of Nobilitie, she hath thereby lost her name of dignitie (together with the privileges of her said nobility also, as it seemeth) for in such a case, *si mulier nobilis nupsit ignobili, deserit esse nobilis*, and that which was gotten by marriage, may also bee lost by marriage; for *Eodem modo quo quid constituitur, dissolvitur*; But if shee bee noble by birth or descent, whomsoever she shall marry, yet she remaineth noble: for birth-right *est character indebilis. Vide Dyer 79. & Br. Nofme de dignitie, 31. & 69. & Co. lib. 16. 8.*

And yet by the Curtesie of England, if women get to any degree of estate, they never lose it by marrying after more meanly, but doe still take place according to the estate of their first husband.

Surety of the peace may be granted by the Just. of P. against a knight and against all other lay persons, being under the degree of a Baron or Peere of the Realme, and they shall be bound with sureties.

Ecclesiasticall persons (if they be not attending upon Divine Service) may be arrested for the peace, and they shall be bound with sureties: But whilst they are doing any Divine Service in the Church, Churchyard, or other place dedicated to God, they may not be arrested. *50. Ed. 3. 5. P. Arrests 1. See stat. 1. R. 2. cap. 15. & 1. Ma. cap. 3.*

Surety of the peace may be granted against the sherife, under-sherife, coroner, escheator, & other such officers of Justice. But M. *Marrow* adviseth, that such persons be not bound *versus cunctum populum*, but only against such persons as shall demand it, lest otherwise it should argue them unworthy & unmeet to beare or exercise any such office in the commonwealth, if there should be cause to bind them *versus cunctum populum*.

Si

Si in onert Sessions un Iustice de peace abuser auter Iustice de P. semble que les autres Iustices poit luy lyer al peace. Crompt. 122. a. Quare si ne manasse l'auser?

One Justice of peace may grant this surety to any man, against one of his fellow Justices (and yet the Commission is joynt;) but great discretion is herein to be used.

Yea a Justice of peace, upon demand, may grant this surety of the P. against his owne wife: and yet he & his wife are but one person in law.

If surety of the peace be demanded against a Juror at the Sessions, it is grantable; but yet the same would not be granted or done before the Sessions be ended.

One Justice of peace may demand this surety of the peace (at the hands of his fellow Justice) against another man.

If a man hath cause to have surety of the peace against one dwelling in the *Cinque Ports*, he must have a Writ out of the Chancery, directed to the Constable of Dover, and to the Warden of the *Cinque Ports*: the forme thereof, see in *Fitz. N. B.* 80.

The wife may demand this surety against her husband, (if hee shall threaten to kill her, or outrageously to beat her, or if the wife hath any notorious cause to feare that hee will doe so) and it shall be granted her by the Justice of peace, or shee may have it by *supplicavit* in the Chancery; *Fitz. 238. f. Br. Peace 23.*

The husband, for the like causes, may demand surety of the peace against his wife. *Et si el ne poit trove Sureties, el serra commit, &c. & issint home poest esse rid dun Shrew.*

Also the Justice of peace, upon his owne discretion, may in either of the aforesaid cases betweene the husband and wife (especially happening in his presence) grant surety of the peace.

An Infant under the age of fourteene yeares, may demand this suretie, and it shall be granted him.

Also this surety of the peace may be granted at the prayer of any person, against a *feme covert*, or against an Infant though hee be under 14 yeares of age. (For if an Infant under 14 hath discretion to demand the peace, &c. then hath he discretion to breake the peace.)

But an Infant, and a *feme covert*, shall be bound by sureties onely, and they themselves shall not be bound; and if they cannot find sureties, they shall be committed to prison untill they have found sureties. And yet if an Infant shall be bound to the peace, &c. by Recognisance taken by a Justice of P. it seemeth he shall be estopped to avoid such a Record, if he doth not avoid it during his minoritie, for it is not void but voidable, by *Audita querela* during his minoritie. *Dyer 232.*

But if a *feme covert* shall be bound, or acknowledge such a Recognisance (though her husband joyne therein with her) yet it is meerly void as to the wife, although shee over liveth her husband.

A man of *Non sanae memoriae*; this surety shall neither be granted against him, nor to him upon his request; and yet if there shall be cause, the Justice of Peace (upon his discretion,) ought to provide for his safetie.

A man that is Lunaticke (*scz.* who at some seasons hath the use of reason, and at other times not) it seemeth this surety of the peace may be

be granted against him ; and also that he may demand the same against another.

And if one of *non sanae memoriae*, or a Lunatike, be himselfe bound by Recognisance before a Justice of peace, to keepe the peace, it seemeth such Recognisance shall binde them, and all others for ever. See 1. 2. 77.

But *quare*, if there bee not a difference to be taken herein, where a Recognisance by an Infant, or one that is *non compos mentis*, shall bee acknowledged in a Court of Record, or in open Sessions, and where before a Justice of P. out of the Sessions.

A man that is deafe, dumbe, and blinde, be it naturally, (*sc.* that he was so borne,) or accidentally, he shall not have this surety granted to him, for he hath no understanding to aske it, and yet for such a person, (or any other person not having reason to demand the P.) if there be cause the Justice of P. upon his discretion ought to provide for their safetie.

A man that is borne dumbe and blind, may have understanding ; and therefore it seemeth this surety may be granted to him, or against him.

But a man that is borne dumbe and deafe, can hardly have understanding ; for though the sight be the chiefest sense, yet by hearing we come chiefly to knowledge, and therefore it seemeth not grantable to him, or against him. See *Stamf. de Prærog. fol. 33. 34. Co. l. 135.*

And yet a man that is dumbe and deafe, or blinde and deafe accidentally, may have understanding, and therefore this suretie may bee granted to him, or against him.

Also this surety of the peace may bee granted against an impotent person, although he be such a one as is not like to breake the peace himselfe ; for he may procure another to kill or beat one : and the common forme of Recognisance is to binde a man from procuring hurt, as well as from doing hurt.

This surety of the peace may also be granted to, or against, a man attainted of treason or felonie.

The like law of him that is convicted of Heresie.

A man excommunicate may have this surety granted to him, or against him. Crom. 17.

So also of a man that is abjured the Realme ; for notwithstanding the abjuration, he oweth the King his leageance, and remaineth within the kings protection, and the king may pardon and restore him againe : *Qui abjurat regnum, amittit regnum, non regem, Co. 7. 9. b.*

A man attainted in a *Præmunire*, may (at this day) require, and ought, to have this suretie granted to him, *P. R. 19. Cromp. 133.*

An alien borne, who is made Denizen, may have this suretie ; and so of an alien borne who liveth in England under the kings protection (although he be not made Denizen.) Crom. 17. 1 R. 18.

And so of an alien, whose king is in league with our King ; or if there be no wars betweene this Realme and that Realme whereof the Alien is, for by the Common Law, all these may get & have within this Realme any personall goods, and may sue for the same, and so have the benefit of the Kings lawes and protection. But an Alien who is the kings enemy (*sc.* where there is open war betweene our king and his king) shall not have Crom. 17. Dy. 1. 3.

have this suretie granted to him, nor any other benefit of the Kings lawes.

Who shall be said to be an Alien. see Co. 7. 16. 17.

In *Calvins* case, 6. 14 Reg. there is a difference taken betweene *Antenati* & *Postnati*, in Scotland, where it is holden that *antenati* in Scotland, sc. such as were borne before the Kings happy comming to the Crowne of England, are here aliens borne; the reason is, for that at the time of their birth, they were under the leageance & obedience of another king; and he could not be a subje& borne of the kingdome of England, that was borne under the leageance of a king of another kingdome. And yet it is manifest that *antenati* being the kings subjects, are herein provided for; by the commission it selfe; the words whereof are, *Et ad omnes illos qui alicui vel aliquibus de populo nostro*, &c. of which number *Antenati* be; so as they may and ought to have this suretie granted them, as well as any other subjects. See *Dyer* fol. 304. & *Pl. fol.* 306. a.

An Irishman borne is a naturall borne subject, and capable of, and inheritable to lands in England, and therefore may have this surety.

But it may be questioned, whether an Infidell, Pagan, or Jew shall have this suretie granted them, For in law they are *Perpetui inimici*, There is be, twene the Christians and them perpetuall enmity, and can bee no peace: Neither can they get any thing within this Realme, nor maintaine any action at all, 12. H. 8. 4.

A Villeine or Bondman may have this surety of the peace against his Lord, and the Lord may have it against his Villeine, and yet it maketh no manumission, although it were demanded by the Lord without any protestation, &c.

How this suretie of the peace may bee commanded, and how the same commandements shall be executed. CHAP. 69.

THe Justice of peace may command this surety of the peace either by word onely, or by writing.

1 By word onely, the party being in his presence; as if in the presence and hearing of the Justice of peace, one man doth threaten another, or shall make an affray or assault upon another, or doe other like thing tending to the breach of the peace, the Justice of peace may command him by word to find sureties for the peace.

Also if one shall demand this suretie against another, who is then in the presence of the Justice of peace; and will be sworne that he is affraid of him, the Justice may by word command the same party to find sureties for the peace.

And the Justice of peace in such cases may by word only command the Constable; or any other knowne Officer (or his owne servant) being then present, to arrest such party to find sureties for the peace, (and to take the party into his or their custody, &c.) And if the partie shall refuse to find such sureties, then the Just. of P. may commit him to the gaole:

But if the party (against whom this suretie of the P. is demanded) bee absent, it is otherwise; for a Justice of P. cannot send for any man, or command any man to be arrested, or brought before him, or to be imprisoned, who is not in his presence, by word onely, but he must make his

his warrant or precept in writing. And Popham, chiefe Justice, said, That the Justices of the Kings Bench, when they send for any of the Kings subjects, it is either by Writ, or by a warrant, or by a Tipstaffe: but the Tipstaffe (said he) is by prescription, except that the partie bee in Westminster Hall, &c. See the Case betweene *Woddy versus Bokers & Read-head*: *Termino Mich. Ann. 2. Jac. Regis. Rotul. 480. in Banco Regis.*

By writing. This Precept or Warrant then must be made in writing, and under the Justice his seale; & must be directed to some officer, or other indifferent person, and must containe the cause, and at whose suit, to the intent the party to be bound, may provide his sureties, and take them with him.

The forme of which Precept, see *postea tit. Warrants, cap. 121.*

The Justice of P. may make his Warrant to bring the party before himselfe (to find surety for the peace) by the opinion of *Wray*, chiefe Justice; for he that maketh the Warrant, for the most part, hath the best knowledge of the matter, and therefore he is the fittest to doe Just. in such case. And yet the most usuall manner is, to make such a Warrant, to bring the party before the same Justice, or some other of the Justices of P. of the same County, &c. And Judge *Finewx* his opinion was, That where a Justice of peace doth make any Warrant for the peace *ex officio*, (sc. by force of the Commission, and not by vertue of a *Supplicavit*,) there the party may chuse to appeare before him or any other Justice in that County: And that the party may have his action of false impris. against the officer, if he doe otherwise compell him. Otherwise it is in the execution of the writ of *Supplicavit*, as you may see here *postea sub hoc titulo.*

Who may serve this Warrant, and whether the Officer may make his deputie; and whether they need shew their Warrant or no; and whether they may breake open the doores, &c. see hereof *tit. Warrants postea cap. 117.*

*How it
shall be
executed.*

The Constable (or other officer) before he arrest the party, upon such a Warrant, ought first to acquaint him with the matter, and withall, to require or charge the party in the kings name, to goe (with him) before the Just. to find and put in sureties according to the Warrant: and if the party shall refuse to doe this, sc. shall refuse either to goe before the Just. or to find sureties, then the officer (by the words of the warrant) may and ought forthwith to arrest him, by vertue of that Warrant, and may convey him to the gaole without carrying him to any Justice, and there the party shall remaine untill he shall voluntarily offer and find sureties: And then such officer ought to be at the next Sessions of the Peace there to deliver in his said Warrant, and to certifie all that he did thereupon.

But if the party shall yeeld to goe and find sureties, then the Officer may not absolutly arrest him: But yet the Officer is not bound to goe up and downe with the party, to find sureties, but may keepe the partie untill he can procure sureties to come to him: And if afterwards the party shall make any resistance, or shall offer to goe his way, then the officer may arrest him, and by vertue of that Warrant may carrie him to the gaole, and may also imprison him in the Stocks, untill hee can provide aid to carry him to the Gaole.

When

When the partie commeth before the Justice of P. by force of this warrant (or by force of any other like warrant for the peace, good behaviour, or a Riot, or the like) the party must offer sureties to the Justice of peace, or else the Justice may commit him to prison; for the Justice needeth not to demand suretie of him.

Also after that the party shall be brought before the Justice, if before him he shall refuse to finde sureties, the officer without any new Warrant or commandement, may carry the party to prison, and that by the words of the first warrant, and if he shall refuse thus to doe, that then, &c. See the forme of the warrant.

If the officer doe arrest the partie, and doe not carry him before some Just. of peace to finde sureties, &c. or upon the refusall of the partie, if the officer shall arrest him, and doe not carry him to the gaole, in both these cases the officer is punishable by the Justices of peace for this neglect, (by Indictment and fine at their Sessions:) And also the party arrested, may have his action of false imprisonment for the arrest: for where the officer doth not pursue the effect of his warrant, his warrant will not excuse him of that which he hath done. 21. H. 7. 23. a. See 3. H. 7. fol. 3. b. *Brian & Br. faux imp. 21.*

And if the party be imprisoned for default of sureties, and after hee that demanded the peace against him happen to die, or shall release the peace, it seemeth in these cases, the Justice of peace may make his Liberate or warrant for the deliverie of such prisoner; for after such death or release, there seemeth no cause to continue the other in prison. Also any Justice of P. may (upon the offer of such prisoner) take surety of him for the peace, &c. and may thereupon deliver him.

It seemeth (by some opinions) that if the party imprisoned for not finding sureties, hath a suit depending in the common place, he may by the course of that Court, by a writ of Priviledge, bee discharged of his imprisonment, if the other party be not readie in the court at the day of the retaine of the writ, to pray there new sureties of the peace. But *quere*, for it may be hee which demanded the peace, hath no notice of the remooving of his body, and then how can he be readie in the court of common place at the day? and therefore it may seeme a hard case so to be defeated of this surety.

If the party hath gotten sureties, then if the warrant proceed *ex officio* (and not upon the writ of *Supplicavit*) and be a generall warrant (*sc.* to come before me or some other Justice) the party may goe before any other Justice of P. to offer his suretie; yet he shall not inforce the officer to traie to a Justice out of the division or Limit where they bee dwelling, without good cause: Nay it is at the election of the officer (who is the minister of Justice) to carry the party attached, to any other Just. of peace that he will: for it is more reason to give this election to the officer (who in presumption of Law is a person indifferent, and is sworne to execute his office duely) than to give the election to the delinquent himselfe, who by presumption will seeke shifts, and to wearie the officer; this hath bene so adjudged.

If the other Justice of peace (before whom the party so attached shall come)

Superfedeas by a Just. of P.

come) shall refuse to accept and take such surety being offered to him, this is punishable in the Starre-Chamber : for such Justice of P. ought to take of him such surety, and to bind him by Recognisance : but yet that must be done in such sort, in all points, as the forme of the former precept doth require : And thereupon the same other Just. of P. (having so taken surety for the peace) may and ought upon request, to make his *Superfedeas* to all officers, and to all other the Just. of peace of the same County, and thereby the said partie shall be discharged from finding other surety, and from any other arrest for the same cause : But by such *Superfedeas* that other Justice cannot discharge the first warrant of the first Justice, untill the party be bound indeed ; nor can give any other day to the party to appeare at any other Sessions, &c.

Also a Justice of peace of the Countie, by a *Superfedeas* cannot discharge a warrant awarded by his fellow Justice, by force of a *Supplicavit* to him directed out of the Chancery, or Kings Bench, to take the surety of peace of one resident in that County.

Also when a man doth feare, that surety of the peace will be demanded against him in the countrey, or doth heare that such a warrant for the peace is already granted out against him, by a Justice of peace ; it seemeth, in either of these cases, he may goe and give surety of the peace before any other Justice of peace of the same County where he dwelleth, and thereupon may have a *Superfedeas* from that Just. of peace, &c. But in such case it is fit that such party be urged by such Justice to put in sufficient sureties, and that he be bound towards the king and all his people, and to appeare at the next Sessions.

If any officer having a warrant from a Justice of P. to arrest a man to find surety of the P. shall receive a *Superfedeas* (out of the Chancery, or Kings Bench, or from any Justice of the kings Bench, or from any Justice of P. of that County) to discharge the same surety of peace, and yet neverthelesse will urge the party (by force of his warrant) to find (new) surety for the peace, the party may refuse to give it, and if he bee arrested or imprisoned for such refusall, he may have his action of false imprisonment against such officer : for such *Superfedeas* is a discharge of the former precept or warrant.

The forme of a *Superfedeas* granted by a Justice of peace ; See *postea* *tit. Warrants. Cap. 122.*

And this *Superfedeas* is sufficient, though it neither name the sureties, nor containe the sums wherein they are bound ; but yet it is the better forme to expresse them both. See 2. H. 7. 1.

Superfedeas from above.

If the party shall mislike to be (or stand) bound to the peace, by the Justices of peace in the countrey, then may he (either before, or after that he is bound in the countrey) goe, or send up to London, and there give surety for the P. (either in the Kings Bench, or in the Chancery,) and thereupon the party may have a *Superfedeas* (out of the court, where he hath given such surety) to restrain the Justices of P. of the country, from taking any surety of the peace of him : and then the Justices of peace of the countrey after the receipt of such *Superfedeas*, must forbear to make any warrant for the peace against that party. And if any Justice of

of peace have granted out any such warrant against the said party, the said Justice must make his *Superfedeas* to the officers, thereby commanding them to surcease to put his former warrant in execution, and so to discharge it, and to discharge the party of an arrest, or imprisonment thereupon. See more *postea sub hoc titulo*.

The forme of a *Superfedeas* for the peace out of the Kings Bench, See *lib. Intr. 454*.

The forme of a *Superfedeas* for the peace out of the Chancery. See *Fitz. 238.c. & Register 89*.

Note, that this *Superfedeas* out of the Chancery, may be procured at any time in the vacation, and out of terme. *Fitz. Nat. Br. 236.A*.

If the Justices of peace shall not surcease, after a *Superfedeas* (out of the Chancery, or Kings Bench) to them delivered, an attachment will lye against him or them for such contempt, and besides they may bee fined and imprisoned for it.

Yea such a *Superfedeas* comming out of those high Courts, to the Justices of peace, they ought thereupon to surcease, although such a *Superfedeas* should be awarded against law.

If such *Superfedeas* shall be directed to the Justices of peace, and sherife; that Justice to whose hands it shall be delivered, may keepe it, and may deliver the labell to the party.

And in these and the like cases the Justice of peace shall doe well to send to the next general Sessions of the peace, as well the said *Superfedeas* (if it come to his hands) as also the Recognisance which he had formerly taken of the party (if he hath taken any) for peradventure the Recogn. was forfeited before the *Superfed.* was purchased; or if it were not forfeited, yet the conusor is not indamaged thereby.

If the party shall procure such a *Superfedeas* (out of the Chancery or Kings Bench) after that he is bound (by Recognisance) before the Just. of peace, to keepe the peace, &c. and to appeare at the next Sessions, *quare* whether the party sending (by his servant) such *Superfedeas* to the Justices of P. at the next Sessions, be thereby discharged of his appearance there, the recogn. also being certified thither by the Justice.

It seemeth to some, this difference is to be holden therein, *sc.* if the party were bound (before the Justice of peace) to keepe the peace against all men, &c. and shall after procure such a *Superfedeas*, testifying that he hath found surety in the Chancery, &c. against all men for ever, and shall send this to the Sessions, this shall discharge his appearance at the Sessions: otherwise if the *Superfedeas* shall testifie, that hee hath found surety, but till a certaine day (which is after the next Sessions.) But yet it seemeth safest in both cases. for the party to appeare to save his Recogn. See to the like purpose the case in 28. H. 8. *Dyer. f. 25.* where a man being arrested by the sherife upon a *Capias*, found sureties for his appearance at the day, and there came a *Superfedeas* to the sherife, and it was mooved whether it were necessary for the defendt. to appeare, or not, to save his bond; or that this appearance & surety were discharged by the *Superfedeas*: & the opinion of the Court was, That he ought to appeare for the saving of his bond. Also the Presidents or Entries are,

Q

that

that the party bound did shew his *Superfedeas* in Court, and prayed allowance thereof, and was thereupon discharged.

But for that divers contentious persons (deservedly fearing to bee bound to the peace or good behaviour, by the Justices of peace in the countrey) doe oftentimes procure themselves to be bound to the peace or good behaviour, in the Chancery, or Kings Bench, upon insufficient sureties, or upon colourable prosecution of some person, who will bee ready at all times to release them at their owne pleasure; whereupon his Majesties Writ of *Superf.* is often directed to the Justices of P. &c. requiring them to forbear to arrest or imprison the parties for the causes aforesaid; by meanes whereof the said contentious persons doe greatly disturbe their neighbours, and affront the Justices of peace, to the evill example of others: therefore it is enacted by the statute made 21. Jac. cap. 8. That all Writs of *Superfedeas*, to bee granted by or out of either of the said Courts of Chancery, or Kings Bench, shall bee void; unlesse such Proccesse be granted upon motion in open Court, & upon such sufficient sureties as shall appeare unto the Court, upon oath to bee assessed at 5. li. lands, or 10. li. in good, in the Subsidie booke at least, &c. And unlesse it shall also appeare first unto the said court, that the Proccesse of peace or good behaviour, is prosecuted against him or them, desiring such *Superfedeas*, *Bona fide*, by some party grieved in that court, out of which such *Superfedeas* is desired to be so awarded and directed.

Si garrant pro pace suis grant vers un que ne Ossa appeare all Sessions pur feare de anter arrest, &c. son remed y poit este in deux manners, sc.

1. *Devant que soit lye per le Justic. de Peace en pais, il poit doner Suretie pur le peace, in le Chancery, ou in Banco Regis, & dilonques avera Superfedeas, ut supra. Et donque il neserra lye per les Justic. de peace.*

2. *Après que est lye per les Justic. de peace in pais, semble n'ad auter remedie, mes d'aucer Cerciorari (hors del Chancery. ou Banco Regis) de remover la le Recognisance, prise per le Justic. de peace, &c. hic cap. 71.*

Now concerning the Recognisance for the peace.

CHAP. 70.

Recogni-
sance.

THis Recognisance which the Justice of peace taketh for the keeping of the peace, is rather of congruence, than by any expresse authority given them. *Fitz. 82. a. 7. H. 4. 34. accord.*

And this Recognisance for the peace, if the Justice of peace doth take it by force of the writ of *Supplicavit*, then he ought to execute it, and to doe in all things as the Writ directeth him. But where such Writ prescribeth not the summe, &c. or such like, that resteth in his owne discretion.

But if he take the Recognisance *ex officio*, and by force of the commission, (and so as a Judge, not as a Minister) then it resteth in the discretion of the same Justice of P. wholly to appoint and allow the number of sureties, their sufficiencie in goods or lands, the summe of mony wherein they shall be bound, and to limit the time how long the party shall be bound, and such other circumstances.

In the booke 7. *Hen. 4. fol. 34. a.* you shall find the principall to bee bound

Lamb. 109.

7. H. 4.

bound in 1000. li. and foure sureties; every of them in one thousand markes before Justices of peace, and for the keeping of the peace.

Quere if a Just. of P. may not examine upon their oaths the sureties concerning their sufficiencie: it seemeth to be the usage in the Courts at Westminster. and M. *Crompton* saith that the Justices of peace in their Sessions may doe it. *Crompt. 194. See his Cap. 114.*

The most usuall manner and safest way for the Justice of peace; is, to take two sureties at the least (and those Subsidy men) besides the party himselfe, and to binde them by Recognisance to the King, viz *Domino Regi*: And it must alwayes be for the keeping of the peace.

And yet by the opinion of M. *Marrow* (who was in the time of king *H. 7.*) a Justice of peace might have taken this surety by a gage pawned onely to him.

Also (by his opinion) a Just. of peace might have taken this surety by an obligation made to himselfe, by the name of Justice of peace.

Yet if a Just. of peace had injoynd a man upon paine of xx. li. to keepe the peace, this had beene nothing worth. But in this and the former two cases, and the like, this one generall ground or reason may be given for all, *sc.* that a man cannot be bound to the King, but onely by matter of Record, and therefore such suretie taken by gage or obligation, or such injoyning of the peace, seemeth nothing worth to binde the party.

Besides, by the stat. 33. *H. 8. c. 39.* there is a plaine law made (in these and the like cases,) which willet, that all obligations, &c. which shall be taken in any wise for the King, shall be made in the kings name, and by these words, *Domino Regi*: And if any person shall make, or take any Obligation (or Recognisance) to the kings use in any other manner, he is punishable by imprisonment at the kings pleasure, &c. *The forme.*

A Justice of P. may take a Recognisance, and thereby may bind the party to keepe the peace for one yeare, or for a longer time (by his discretion) yea he may binde the party during his life upon reasonable cause: and this the Justice may doe, either by his owne absolute authority, or upon complaint to him made, and upon good cause shewed; as, if the offendor be a common Barrettor, a Riotter, or else in the Justices conscience a dangerous person: but if such surety be so taking during the offendors life, the Justice of P. can never release that afterwards: and therefore the Just. must be well advised how he granted such surety.

If the recognisance be made to keepe the peace (generally) without any time or day limited, it shall be construed to bee during the parties life. *Lambert 113.*

A Justice of P. intending to take a recogn. for the P. and yet maketh no mention therein (nor in the condition thereof) that it is for the preservation of the peace, it seemeth to be voyd, as being taken *coram non Iudice*: for a Justice of peace hath no authority to take a recogn. generally, but for matters concerning his office specially.

If the recognisance bee, that the party bound shall not beate, nor maim *A.* yet it is not good, because it ought to bee for the keeping of the peace (generally,) and the peace may bee broken by burning the house of *A.* or the like.

If the Recognisance doe not limit any time of appearance for the Conuzor, but be generally to keepe the peace, yet it is good, for the time of appearance is referred to the discretion of the Justice, and the chiefe scope is, the keeping of the peace. *Marrow.*

Also (by his opinion) if the Recognisance doe limit a time of appearance, but therein is no person named, before whom the party so bound shall appeare; then may he appeare (in any place out of the Sessions, where he will) before that Justice of peace which tooke the Recognisance. *Ibidem.*

But in the two last cases, if a Recognisance should bee taken in such manner at this day, I should thinke it safe for the party to appeare at the next Sessions for the peace, and there to record his appearance: See more *postea sub hoc titul.*

If the Recognif. be to appeare before the Justice of P. within fortie dayes next after the date, or taking of the Recognisance, and before the end of the 40. dayes a generall Sessions of the P. shall bee holden, &c. the party now ought to appeare at the same Sessions. *Crompt. 123.* See the like matter, *Br. Condition 208.*

Also if these words be in the Recognisance, *sc.* that he shall appeare before the same Justice, & *sociis suis*, then must hee appeare at the next Sessions.

If the Recognisance bee to appeare at any other Sessions after (and not at the next Sessions) yet the Recognisance is good: And yet by the statute 3. *H. 7. cap. 1.* it is now enacted; That every Recognisance taken for the peace, by the Justice of P. and *ex officio*, shall be certified (*sc.* sent or brought in) at the next Sessions of the peace, and there delivered to the *Custos Rotulorum*, that the party so bound may bee there called; whereby it may seeme that every Recognisance taken for the P. now, ought to be, to appeare at the next Sessions. Crom. 146.
P. Jul. 156.

If the Recognisance bee in twenty pound to bee levied of his lands onely, or of his goods onely, yet it is good; and these words [onely] may seeme void: for the acknowledgement of the Recognisance (before a competent Judge) both maketh it a debt, and implieth the ordinarie meanes of Law to come unto it. See hereof *postea tit. Recognisance, cap. 123.* Lamb. 107.

If the Recognif. be to keepe the peace towards the King, and all his people, but not towards any person certaine, yet it seemeth good.

So if the Recognisance be to keepe the P. towards *A.* only, it seemeth good; or to keepe the peace towards *A.* and his servants, without being bound toward the King, and all his subjects; it seemeth good. Fitz. N. B.
80. G.
Crom. 143.

But the best forme is to binde the party, to keepe the P. towards the King and all his people; for first, the words of the Commission are to find suretie, *Erga nos & populum nostrum*; and againe the common usage is so: and besides it may otherwise prove dangerous to the party who hath cause to crave this surety of the peace; for the other party who shall give mee just cause to crave this surety against him (because he will not be bound to the peace towards me) he will perhaps pray to binde himselfe to the peace to *A.* who is his companion, and then if the Justice of peace

peace (hall to binde him, then may he and *A.* goe before another Justice of P. (and that peradventure within one weeke) & there *A.* may release him of the peace; and so (I trusting that hee is still bound) may be after beaten, maimed, or slaine by him, or by his procurement.

So then though the recognisance being taken in any manner or sort afore-said, may prove sufficient to binde the party to the king, yet peradventure it will not excuse the Justice of P. from blame, and therefore it is safest for the Justice of P. to follow the received forme.

The forme of the Recognisance for the peace, see *postea sit. Recognisance, Cap. 123.*

The Recognisance for the peace being thus taken, if it were by vertue of the Writ of *Supplicavit*, the Justice ought to returne the Writ, and to certifie (under his seale) his doing therein into the court from whence the *Supplicavit* proceeded; and hee may also send such Recognisance (so taken by him) with this Certificat; or else he may keepe the Recognisance in his hands still, untill hee shall receive a *Certiorari* out of the Chancery directed to him for removing of this recognisance. See more *sub hoc sit. postea.*

But if this Recognisance for the peace were taken by the Justice of peace *ex officio*, then the Justice of P. ought to certifie (send or bring) the Recognisance to the next Sessions of the peace, so that the party bound may be called thereupon; and that if the party make default of appearance, the same default may be then and there recorded. See *2. H. 7. fol. 1.*

If a man doe forfeit his Recognisance (either for default of appearance, or for breach of the peace) the Justices of peace may not award any proccesse for the forfeiture thereof; but must certifie the recognisance, with the cause of the forfeiture, into some one of the kings courts at Westminster.

And not that the said recognisance it selfe, with the record of such default of appearance, or other forfeiture, shall be sent and certified into the Chancery, kings Bench, or Exchequer, that from thence proccesse may goe out against the party; and so ought it to bee if be presented by the Jury or great Enquest, that the party hath forfeited his recognisance by breach of the peace. *Lamb. 570.*

If the Justice of peace shall not certifie such recognisance (taken for the keeping of the peace) at the next Sessions, the said stat. *3. H. 7. cap. 1.* limiteth no penaltie; and yet see *Brooke sit. Peace 11.* That the Justice shall forfeit *x. li.* if hee doe not certifie the recognisance of the peace at the next Sessions: but *M. Brooke* there mentioneth the statute *3. H. 7. cap. 3.* which statute of *3. H. 7. cap. 3.* was onely for baylement of prisoners, and certifying the same, and so seemeth to mistake the statute. *Vide Fitz. 251. f.*

If he which demanded the peace shall release the peace, before the said next Sessions, then it may seeme though the Justice of peace shall not certifie the Recognisance, that the statute is not transgressed or offended; for it hath bin holden that the party shall not be called in such case upon his Recognisance: *tamen quare inde, & vide hic postea Cap. 71.* but howso-

Margaret

Recogni-
sance re-
moved.

ever, it is better to certifie the Recognisance, for peradventure it was forfeited before the release made.

Also he that demanded this surety, may by a *Certiorari*. remove such Recognisance into the Chancery before the Justice hath certified the same to the Sessions, And soe in case the Justice shall not certifie the same thither, *Fitz. 81. c.* See here *postea cap. 73.* the forme of the Justices returne of such *Certiorari*, and of the Recognisance.

If the Justice of peace were deceived in the sufficiency of the sureties, the same Justice of peace, or any other Justice of peace, may afterwards compell the partie to find and put in other more sufficient sureties, and may take a new Recognisance for the same; for that the precept is, *Ad inveniendum sufficientem securitatem*. But if the sureties dye, the partie principall shall not be compelled to find new sureties. See more *postea. sub hoc tit. & postea tit. Bailement. Cap. 114.*

what thing shall discharge this Recognisance (of the peace,) or the party of his appearance at the Sessions.

CHAP. 71.

WHether a *Supersedeas* out of the Chancery, &c. shall discharge the party of his appearance. See *antea sub hoc tit. Cap. 69.*

He which is bound to the peace, and to appeare at a certaine day, he must appeare at that day, and record his appearance, although hee who craved the peace commeth not in to desire that it may be continued, otherwise the Recognisance shall be forfeited.

And if a man bee bound to keepe the peace towards the King and all his people, but not towards any person certaine, and to appeare at such a Sessions, the Court at that Sessions may make Proclamation, That if any man can shew cause why the peace granted against such a one shall be continued, that hee speake, &c. And if no person commeth to demand the P. against him, or to shew cause why it should be continued, then the court may discharge him. But if a man bee bound as aforesaid, and especially to keepe the peace towards *A.* there though *A.* commeth not in to desire that the peace may be continued, yet the Court by their discretion shall doe well to binde him over till the next Sessions; and that may be, to keepe the peace against *A.* onely if they shall thinke good: for it may be that *A.* who first craved the P. is sicke, or otherwise letted, so as he cannot come to that Sessions, to demand the continuance of the peace further: and in some places in such case, they ordinarily use to binde him over for two or three Sessions together, by order amongst themselves.

And yet by the course of the common place, one that was imprisoned for the peace (being remooved thither by a Writ of priviledge) was there discharged, for that hee which demanded the peace came not at the day (of the returne of the Writ) to pray continuance thereof. See more *antea sub hoc tit. Cap. 69.*

If the Justice of peace shall not certifie the Recognisance to the Sessions, yet the party ought to appeare, and to record his appearance. See such a matter of a Sherife, who tooke bond of one to appeare in the Common banke, at a certaine day, &c. although the Sherife returne not his

2. H. 7. 1.
Br. P. 4. 1.
Fitz. N. 3. 4.

30. H. 4. 14.
Br. Surety
10. & Del.
60.

Lamb. 111.

2. H. 7. 4.
Br. Surety
19.

his writ, &c. yet the party must appeare to save his bond. *Vide* 18. E. 4. 18. for this last case.

Crom. 143

If the party that is bound to appeare, be so sicke that hee cannot appeare, nor by any meanes travel at the day, yet it seemeth his Recognisance in strictnesse of law is forfeit, and so it is by the course of the Courts at West. *ut dicitur*; yet in this case upon due prooffe of such his sickness, I have knowne the Justices of P. (in their discretion) have forborne to certifie or record such forfeiture or default: And that they have taken sureties for the peace of some friends of his present in court untill the next Sessions; for that the principall intent of the Recognisance was but the preservation of the peace. But *quare* how this is warrantable by their oathe; Besides, the party so bound might (by a *Certiorari*) have remooved his Recognisance into the Chancery, or kings Bench, before the day of his appearance, and then hee should not have needed to appeare at the Sessions, for that the Justices there should have no record whereupon to call him.

But the Civill law in such cases is more favourable: for with them the Rule is, *Citatus ad locum non tutum, non ardeatur comparere*: as if the plague shall be hot in the place, or towne where the party is to appeare, or where their court is held, this is good excuse in their law, *ut dicitur*.

So if there shall be any other inevitable accident, whereby the party shall be hindred, as by any great snow, inundation of waters, or by any fall, or other hurt, or sickness, whereby the party is in danger of death; in these and the like cases the Civill law doth dispence with defaults, referring these things, *arbitrio Iudicis*.

See M. Booke tit. Saver de defaults. 17. 28. 45. & 48.

Crom. 144.

If the husband be bound that he and his wife shall appeare at such a Sessions, and that they shall keepe the peace in the meane time, &c. and at the day the husband doth appeare, but not his wife; here M. Cromp. saith the Recognisance is not forfeit; for if there shall be cause to continue this surtie of the peace against the husband and wife still, the husband shall be bound, and not the wife, and therefore the wives appearance seemeth not greatly materiall, *tamen quere*, & *Vide Fitz. Forfeiture* 17. 8. E. 2.

11 E. 4. 45.
Lamb. 113.

If a man be bound to the peace during his life. or generally, without any time or day limited, in such case, neither the King, the Ju. of peace, nor the party, can discharge this Recognisance, during the life of the partie so bound, by release, or otherwise. *Br. Peace* 17.

Also it hath beene holden, that the Justice of P. who upon his owne discretion hath compelled one to find suretie of the peace untill a certaine day, and hath taken Recognisance for his appearing, &c. may upon the like discretion release the same before that day; and that such a release will discharge the Recognisance taken by that Justice, if it were not forfeited before, and will also discharge the party so bound, of his appearance: for that here all this businesse depends only upon the discretion of the Justice of peace who bound him. See *Fitz. Inj. de P. fo. 9. Lamb. 113. & Cromp. 139.*

Againe, it hath beene holden, if a Justice of P. shall grant the peace at the

the request of another (*sc.* at the suit of *A.*) and the recognisance be taken to keepe the peace against *A.* onely, then (before the next sessions) may *A.* onely release it (and none other:) And that release being certified at the next quarter Sessions, will discharge the party so bound, of his appearance, so as he shall not be called upon his recognisance; for that release being so certified, is now become of record as well as the recognisance.

If the recognisance were to keepe the peace *versus cunctum populum* & *præcipue versus A.* yet may the same *A.* release it: for although this may seeme popular, and that all others should have interest therein as well as *A.* yet as it appeareth by the word *Præcipue*, it was especially taken for his safetie: but the contrary was holden by all the Justices, 21. *E. 4. 48. sc.* that the party at whose suit the same was granted, cannot release the same. And *M. Lam.* alloweth best of that opinion: nevertheless the usage now is, and long hath beene, as is aforesaid, as appeareth by *M. Brooke sis. Peace. 17.*

But (in these former cases) although this surety of the peace be released, and the parties agreed, yet the recognisance shall not bee cancelled by the Justice of peace, for peradventure the recognisance was forfeited before such release made: And therefore the Justice of peace shall doe best, nay ought to certifie such recognisance, with the release, together, the next quarter Sessions.

The forme of the release of the Just. of peace. See *postea sis. Release cap. 128.*

The forme of the release of the partie. See *ibid.*

Note, it hath been holden that the party that first demanded the peace might release the same before the same Just. of peace that tooke the recognisance, or before any other Justice of peace.

Note also, that to release such surety of the peace, by deed under his hand and seale, is nothing worth.

But yet it is now holden, that neither the Justice of P. nor the party, can discharge the recognisance of the Peace by their release out of the Sessions: for first the recogn. is made to the King, and therefore none but the King can release or discharge the same. Secondly, the recogn. is taken for the appearance of the party, &c. (as well as for his keeping of the peace) and the release of the Justice or of the party, cannot discharge the appearance of the party bound. And therefore notwithstanding that the Justice of P. out of Sessions shall make or take any release of the peace, yet it shall be safe for the party bound to appeare for the safeguard of his recognisance; And upon the Certificate made by the Justice of peace to the Sessions of such release, the consor shall be there discharged, (at least) against the party who first craved the peace.

And in truth the appearance of the party bound seemeth requisite notwithstanding any release made; first for the safeguard of his recognisance, as aforesaid: secondly, that others may object against him (in the open Sessions) if he hath in any sort broken the peace, so as he may be there indited upon the same, &c.

Note

Note also, the King can in no case release or pardon the surety of the peace, nor such Recognisance (taken in the behalfe of any of his subjects) untill it be forfeited, for the mischief that may come to the party thereby, but being forfeited then the King and none other may release and pardon the forfeiture.

1. H. 7. 7.
Br. Peace
19.
Br. Cor. 21.
But the death (or resignation) of the King dischargeth this surety of *Death* the peace, taken by his subject: for the recognisance is to keepe the P. of the king (then being) and when he is dead, &c. it is not his peace. *Br. Surety* 20.

Lamb. 116.
Also the death of the recognisor (*sc.* of the party principall that is bound) dischargeth this surety of the peace and the recognisance. See 21. *E.* 4. 70. & 15. *H.* 7. 2. & 13.

Lamb. 116.
Also the death of the party, at whose suit the peace was taken, dischargeth the recognisance if it were to keepe the peace against him alone.

But yet in these three former cases, such death shall not discharge the recognisance if it were forfeited before: and therefore it shall be best for the Justice of peace to send to the next Sessions, such recognisance (notwithstanding such death,) else the king may be defrauded of a forfeiture, if any were before.

11. E. 4. 10.
Br. Peace 17.
The death of the sureties, shall not discharge the recognisance, neither shall the party principall be compelled to find new sureties after their death; for if the peace be broken after their deaths, their executors shall be charged therewith; and so there is no mischief by their deaths: yet *alii è contra ibidem, sc.* that the principall shall be compelled to find new sureties.

11. E. 4. 10.
16. H. 7. 11.
Br. Reco. 21.
If the king and the recognisor be at issue upon the breach of the peace, and the king waives the issue: yet is not this recognisance discharged, but remaineth in force, and may be sued againe upon a new breach of the peace afterwards.

what act shall be (or makes) a forfeiture of the recognisance taken for the peace. CHAP. 72.

Lamb. 117.
WHatsoever act is a breach of the P. the doing threatening (or intending) thereof, against the person of another being present, is a forfeiture of this recognisance.

11. E. 4. 28.
Br. Peace 16.
And therefore first this breach of the peace may be committed by using any fearefull or threatening speeches to the person of another: therefore all menacing or threatening to kill, or beat another, to his face, is a forfeiture of this recognisance; otherwise if the party so threatned, be absent. And yet if the party so bound, shall threaten to kill or beat *A.* who is absent, and after shall lye in wait for him to kill, or beat him, this is a forfeiture of his recognisance, without any threatening, assault, or affray to the person. 22. *E.* 4. 35. *Cromp.* 135.

So assaults, *sc.* to strike at, or offer to strike at a man, although he never hurt, or hit him, this is an assault, 22. *Aff. Pl.* 60. And is a forfeiture of this recognisance: see *Cromp.* 137. *b.* & 40. *E.* 3. fol. 40.

Much more all affraies, or violent and malicious batteries, strikings, beatings, woundings, or other mis-intreatings of the person of another

ther, are forfeitures of this recognisance.

The difference of these three, are, menacing beginneth the breach of the peace, assaulting increaseth it, and battery accomplisheth it.

Or thus: Battery is the wrongfull beating of another. *Fi.*

Assault, is when one unlawfully sets upon the person of another, offering to beat him, although he beats him not, or striking at him, though he strikes him not, *ibidem.*

Hither also belongeth lying in waite, besetting his mansion house, & not suffering his servants to goe in and out, &c. *Fi.*

Menaces, are threatening words, to beat another, or the like, for feare whereof he dares not goe about his businesse. *ibid.*

For breaches of the peace without word, or blow given, as to goe with weapons, or company unusually, which be in *effrey del pais*, see page. *seq.*

If he that is bound doe but command or procure another to breake the peace, and that it be done indeed, this is a forfeiture of this recognisance. *Br. peace 20.*

All false imprisonment, or arresting of another, without warrant, is a forfeiture of this recognisance. Now false imprisonment is any unlawfull restraint of Liberty. *Fi.* Lamb. 170.

So to thrust another into the water, whereby he is in danger of drowning, is a forfeiture of this recognisance.

So to ravish a woman against her will.

So to commit burglary, robbrie, murder, or manslaughter (all which are to the person of another,) or to procure the same; all and every of these are forfeitures of this recognisance.

So to doe any treason against the person of the king, this is a breach of the peace, and a forfeiture of this recognisance: for although the words of the recognisance usually bee, *Quod gerit pacem erga cunctum populum Domini Regis, & precipue erga A. B.* (and is not *erga ipsum Dominum Regem, & cunctum populum, &c.*) yet because this fact is 'done against the head of the body of the whole Realme, it is to be adjudged a prejudice and hurt, *ad cunctum populum*, and a breach of the peace in the highest degree.

But note that the act which must make a forfeiture of a recognisance for the P. must be done or intended to the person of another, (by the opinion of M. Marrow.) And the booke of 2. H. 7. importeth as much, saying that this surety of the peace is not broken without an affray, fighting, beating, or the like. Marr. 102.7
2. H. 7. c. 2.

And yet to be riotously assembled, is a breach of the peace, and a forfeiture of this recognisance for that it is in *terrorem populi*. Nay if two Justices of peace shall record a ryot upon their view (against a man so bound to the peace) although it were no riot, &c. yet hee cannot plead not guilty in a *Scire facias* upon his recognisance. Marr.
Lamb. 111.

Also to weare armor, or weapons not usually worne, or to goe with an usuall number of attendants, seeme also to be a breach or meanes of breach of the peace, and a forfeiture of this recogn. for the P. for they strike a feare and terror in the people, and be in *effrey del pais*. See *Br. Surety 12. & hic cap. 74.*

He

He that is bound to the peace ought to carry himselfe well in his behaviour, and company. See *antea sub hoc tit. Et postea tit. Surety for the good behaviour.*

Yet the having of weapons or company vnusuall, are in some cases allowed, and lawfull, and are no breach of the peace. See hereof *postea tit. posse Comitatus, & postea tit. Ryors.*

Also though assaults and batteries bee for the most part contrary to the peace of the Realme, and the Lawes of the same, yet some are allowed to have a naturall, and some a civill power (or authoritie) over others; so that they may (in reasonable and moderate manner onely) correct and chastise them for their offences, without any imputation of breach of the peace; yea they may (by the law) justifie the same; and so in such cases the beating or battery of the person of another, maketh no breach of the peace; but the manner of the battery onely doth make the breach of the peace.

And therefore the parent (with moderation) may chastise his childe within age.

So may the master his servant, or apprentice, for their evill service.

So may the schoole-master his schollers.

So may a Gaoler (or his servant by his commandment) his unruly prisoners.

So may any man his kinsman that is madde, &c. And none of these shall be in perill therefore to forfeit any recognifance of the peace.

Note that the master may strike his servant with his hand, fist, small staffe, or stick, for correction; & though he doe draw bloud thereby, yet it seemeth no breach of peace, as appeareth by the statute of 33. H. 8. cap. 12.

And where the servant shall be negligent in his service, or shall refuse to doe his worke, &c, there the master may chastise his servant for such negligence or refusall; so as he doth it not outragiously.

But if the servant shall depart out of his masters service, and the M. happen after to lay hold of him, yet the master in this case may not beat or forcibly compell his said servant against his will to returne, or tarry with him, or doe his service; but either he must complaine to the Justices of peace for his servants departure; or he may have an action against his servant, if being required to doe his service he shall refuse it. See *antea tit. Laborers.*

And as the M. without the breach of the peace, cannot by beating or force, compell his servant to serve him against his will: no more can a Lord, or Gardian in chivalry, compell his ward, by beating, or by force to come unto him, or to tarry with him against his will.

Also the schoole-master, with a rod, may chastise his scholler which is carelesse and negligent in learning, or that shall abuse his schoole-fellowes, or for other the like occasions.

Also it is lawfull for the parents, kinsmen, or other friends of a man that is mad, or frantike (who beeing at liberty attempteth to burne an house, or to do some other mischief, or to hurt himselfe, or others) to take and put him into an house, to bind or chaine him, and to beat him with rods, and to doe any other forcible act to reclaime him, or to keepe him so as he shall doe no hurt. *Br. F. imp. 35.*

Also

An officer. Also if a Constable, Sergeant, Bailife, or other officer of Justice, or any other being of their company, for the better executing of their office, shall be forced to strike any person that will not yeeld to their arrest, or that shal resist, or flie from their arrest, they shal not be in any danger to forfeit any recognisance of the peace by any such assault, or striking, but may well justifie such act.

In defence of any person. Also it is no breach of the peace, for any privat man to beat, strike, or wound another, in defence and safegard of his owne person, from killing, wounding, or beating, but is a thing justifiable. And In an action of Trespas de Assault et Battery, the def. may pleade, *Defon Assault demesne. se. que illi facta in defence luy mesme, enconter le assault del playntiffe &c.* And yet by others; if another shall assault me, if I may escape with my life, or without being wounded, maimed, or hurt, it is not lawfull for me to beate or wound the other, who first made the assault, but I must first flie, or goe from him so far as I can. 25.E. 3. 42. 2.H. 4. 8. 33. H. 6. 18.Br.Tr. 28. 71. Cro. 137. hic cap. 78.

Sed vim vi repellere licet, modo fiat moderamine inculpatæ tutele.

Non ad sumendam vindictam, sed ad propulsandam injuriam. Co. L. 162.

By the Civill law he shall not be said to have done a wrong, who incontinently for his safegard, after the same manner whereby he is assaulted, doth defend himselfe; as when a man is assaulted by weapons, he may resist with weapons: but if he doe exceed measure in repelling an injury, as if being wronged in words, he shall resist with weapons, & by such resistance doe beat or wound the other party, he which is so beaten or grieved may have his action, and shall recover dammages, &c.

And to prescribe some temper and moderation in the resisting of verball, or actuall injuries, one hath these verses:

Res dare pro rebus, pro verbis verba solemus,

Pro buffis, buffas, pro trufis reddere trufas.

Things must be recompens't with things, buffets with blowes,

And words with words, and taunts with mockes and mowes.

If two or more doe agree together to play at Barriers, back-sword, Bucklers, Foot-ball, or such like, and one of them doth wound or hurt another, the party hurt shall not have an action of Trespasse therefore against the other, for that it was by consent, and to trie their valour; and not to breake the peace. *Fitz, Barr. 244.*

Yet if such a man were before bound to the peace, such act seemeth to be a forfeiture of his Recognisance. See *Br. Cor. 229.* for although such sports be suffered, yet they are not lawfull.

In defence of others. Also it is no breach of the peace, for a man to beat him that doth assault and would beat, wound or evill intreat his wife, father, mother, or master, but is justifiable.

So if the wife shall beat him that shall assault, and would beat or evill intreat her husband.

So if the father, or mother shall beat him that doth assault, and would beat or evill intreat their child, being then within age, and not able to defend it selfe.

But though the servant may lawfully beat him that doth assault and would

would beat, or evill intreat his Master, or Mistresse: yet the servant cannot justifie the beating of another in defence of the father, mother, brother, sister, son, or daughter of his master or mistresse, for hee oweth no obedience or duty to any of them. See *Fitz. Barr.* 73. & 102.

By some opinions the Master cannot justifie the beating of him that doth assault, and would beat his servant: but the master with a sword, staffe, or other weapon may defend his servant assaulted, from being beaten, in respect of the losse of his service. Yet M. *Lambert*, and M. *Crompton* are of opinion that the Master may beat another in defence of his servant; but 9.E.4. *Fitz. Barre* 102. *contra*.

Neither can the Fermour or tenant justifie such an act in defence of his Land-lord, nor a Citizen &c. in defence of the Mayor (or Bailiffes) of the City, or Towne corporate where he dwelleth.

And yet where the life of any person is in danger by beating of another, there any stranger may lawfully resist it, and that with force, and beating of him which offeth such violence. *Vide* 12.H. 8.2.b. *hic cap.* 78.

Also the Law doth tolerate a man to beat another for the preservation of his goods: And therefore he that shall attempt by force and violence to take away my goods wrongfully from mee, whether they be goods whereof I have a lawfull propertie, or such goods whereof I have only a possession by the bailement of another, I may justifie to defend the same by force, and if I shall hurt or beat such person, it is no breach of my Recognisance for the peace, yet if I shall wound him by such beating, that is not justifiable: but if I kill him, it is felony; and in both these last cases it is a breach of the Recognisance. See *hic cap.* 78.

If another man will take away my goods, I must first lay my hands upon him and disturbe him, and if he will not leave, then I may beat him rather than he shall have or take away my goods. *Fi.*

The same law is in every case where another shall attempt by force to take away or to put me out of possession of my Land, Freehold, Copyhold, or Lease; or to stop or turne my lawfull Highway, or my ancient river, or water-course leading to my Mill; in these and the like cases if I shall disturbe him therein, whereupon he doth assault and attempt to beat me, I may justifie to beat him againe, as well in defence of my person, as of my possessions, but not to kill him.

The same law is also in every case, where an offender is by order of law punished with whipping, stocks, pillory, or otherwise, for any offence by him committed contrary to the lawes or statutes of the realme, there is no peace broken, nor any Recogn. of the peace forfeited by him or them which shall lawfully execute any such punishments.

Note further, that there are divers things which may be done against the peace, and divers offences, for which an Enditement *contra pacem* will lie, and yet the committing or doing of such offence or act, shall be no forfeiture of the Recognisance for the peace; for that the act that shall breed a forfeiture of such a Recognisance, must be done or intended unto the person, as aforesaid, or *in terrorem populi*.

Therefore to enter into lands, where hee ought to bring his Action, or to disseise another of his lands:

Or to enter into lands or tenements with force, being without offer of violence

violence to any mans person, and without publike terrour. *Crompt. 136.*

Or to doe a trespasse in another mans corne or grasse:

Or to take away another mans ward:

Or to take away another mans goods wrongfully, so it be not from his person:

Or to steale another mans horse, or other goods feloniously, being not from his person:

All these, and the like be breaches of the peace, and yet these will make no breach of this Recognisance; nor breach of the peace within the meaning of the commission of the peace.

Note, that if a man be bound in such a Recognisance for himselfe and his servants, if any one of them breake the peace, the whole Recognisance is forfeited. *Et sic. in similibus.*

Note also, that the sureties may pleade, that the party principall hath not broken the P. although upon issue the same shall bee found against the said principall; for they are estrangers thereto. *Fitz. Auerment. 46.*

Now concerning the Writ of Supplicavit. CHAP. 73.

THe formes of this writ, out of the Chancery, are of divers sorts, as you may see, *Fitz. N. B. 80. d. & Register 89.*

By which formes of the Writ, it appeareth, that it may bee directed to the Justices of peace, or to one of them; or to the Sherife, or to every of them, to cause the party that is to bee bound, to come before him or them, to find surety of the peace. And this writ may be that the principall shall be bound in such a summe, and the sureties in such a summe certaine, (and that may be in what certaine summes the demandant will:) or the summes may by the writ bee referred to the Justice of peace, &c. with this clause therein contained, *pro qua respondere volueris*: and the said writ is further, that if the party shall refuse, &c. that they shall commit him to the gaole, *quousque*, &c. and that when they have taken such surety, they doe certifie the Recognisance (which they have so taken) under their seales, and returne the Writ into the court from whence the same was awarded, and that without delay.

And for that this Writ is of divers formes, the Justice of peace must have a care that hee doe execute the same in every behalfe, as the same writ shall direct and appoint him.

When the writ doth referre the summe (wherein the principall, and his sureties shall be bound) to the Justices, &c. then it resteth in their discretion; but yet it is then safe for them to take good sureties, and to binde them in good summes; and the rather when that clause is in the Writ, *pro qua respondere volueris*.

When this writ is directed to the sherife, and to all the Justices of peace of that county, and is delivered to any one of them, hee onely to whom it is first delivered, ought to execute the same writ (in every behalfe) *sc.* he onely shall make a warrant, &c. returnable before himselfe, and he onely shall take sureties, and make returne thereof (onely) without any other.

The forme of a warrant for the peace upon a *Supplicavit*: see *postea tit. Warrants, cap. 121.*

Also the same Justice of peace after such surety taken, may make the party a *Superfidei*

superfedeas to discharge him from any other arrest; or to deliver him being in prison for the peace, (at any other mans suit, as it seemeth.) *Crompt. 237 b.*

The forme of such *Superfedeas*: see after, *tit. Presidents, cap. 122.*

The party who is attached upon this Writ of *Supplicavit*, cannot goe to bee bound before any other Justice of peace, but onely before him from whom the warrant proceeds upon this writ; neither can another Justice of peace (by a *Superfedeas*) discharge such a warrant made by his fellow Justice, by force of this writ.

The Justice or Sherife, to whom this writ shall bee delivered, may make a deputy herein; *sc.* may make his warrant to the Bailife, Constable, or other person indifferent, to apprehend the body, or to cause the party to come before him (the said Justice or Sherife) to find sureties, &c. And that if he shall refuse, that then the Constable, &c. shall carry him to prison, there to remaine untill he shall find sureties; and yet the writ of *Supplicavit* is to commit the party to the Gaole, if he shall refuse before the Justices (*Si coram vobis, vel te, recusaveris, &c.*) But the Justice or Sherife cannot give their power to another, to take this surety; for that is a Judiciall power, which cannot bee assigned over: neither can they make any deputy therein; but they must take this surety themselves: & the Bailife, or Constable who apprehended the body, cannot take this surety. *Br. Office 39. & fx. imp. 34.*

If the party shall make resistance upon the execution of this writ, the officer may take *posse comitatus*, *sc.* the helpe of his neighbours, to aide him to arrest such party: see *postea tit. posse comitatus*: or else the said Just. may make his warrant to the Sherife to apprehend the party, and upon resistance the Sherife may take *Posse Comitatus*. to arrest the party.

Hee that is to bee bound to the peace by force of this Writ of *Supplicavit*, out of the Chancery, is to be bound against him onely that sueth out the writ, as appeareth by the forme of the Writ aforesaid.

But yet at this day it is used otherwise: and I once received out of the Chancery a speciall writ of *Supplicavit*, directed *Custodibus pacis, ac vic. & cora cuilibet*, commanding us to take sureties of the party to be bound *quod ipse damnum vel malum aliquod alicui de populo nostro, & imprimis eide Joh. &c.* (that sued out the writ) *non fac, nec fieri procurabis, &c.*

Also by this writ of *Supplicavit*, the party (against whom the writ is sued forth) shall be bound to the Peace for ever (if he bee taken;) for the writ containeth or mentioneth, not that hee shall be bound to keepe the Peace untill any certaine time; but generally (*ad sufficientem securitatem inveniend. sub poena, &c.*) And therefore to prevent this, the party (before he be attached) may come into the Chancery, and there find sureties, and be bound untill a certaine day, that he shall doe no hurt, &c. unto the party that sued forth the *Supplicavit*; and thereupon he shall have a *Superfedeas* out of the Chancery, directed to the Justices of peace, and to the Sherife (or to one of them) commanding them to surcease to arrest the said party, or to compell him to find any sureties, &c. And that if they have arrested or imprisoned him for this cause, and none other, that then they deliver him, &c. *Fitz. 18. 2.* The forme of the *Superfedeas*, see *Register. 89.*

And if the party against whom this writ is sued forth, cannot travell,

(or else will not travell) to binde himselfe in the Chancerie, then he may cause some of his friends to be bound, or to find sureties in the Chancerie for him, according to the *supplicavit*, and thereupon they may purchase a *Superfedeas* out for him, directed to the Justices of Peace and to the sherife, and by this *Superfedeas* the Justices and the sherife shall be commanded to take also surety of the party himselfe in the country (according to the writ of *Supplicavit*) that hee shall keepe the peace, &c.

Also if the party happen to be arrested, and imprisoned upon this Writ, yet if hee can procure a *Superfedeas* out of the Chancery, it seemeth (by the words in the end of the *Superfedeas*) that this will discharge him of the arrest, or imprisonment.

Now after the party is arrested and imprisoned (upon this Writ) the meanes for him to procure a *Superfedeas* out of the Chancery, must be;

1 Either to get some of his friends to be bound in the Chancery for him, and they to get a *Superfedeas ut supra*.

2 Or else to get a Certificat to the Lord Chancellor, from three or foure Justices of peace in his behalfe, signifying, that the party plaintiffe never demanded the peace in the country; and further that the plaintiffe is a contentious man, and the other party of good fame: and upon such certificat (*dicatur*) they will either discharge the partie, or else grant him a *Superfedeas*.

This Writ of *Supplicavit*, is granted (or may be granted) in the Chancery, or Kings Bench, upon great cause shewed and proved there, and is (or ought to be) granted upon oath, that the party is in feare, &c. of some bodily hurt &c.

But this Writ of *Supplicavit* hath heretofore oftentimes bin procured and gotten out rather of malice and for vexation, than upon any needfull or just cause: And Sir Edward Coke speaking of such as maliciously shall purchase out any speciall *Supplicavit*, or *Latitat* of the peace, (and that by fraud and malice to inforce the other party, *ad redimendam vexationem*, to give them money, or to yeeld them other composition) brandeth them as Barretors, and notable Oppressours of their neighbours, oppressing thereby the poore and innocent by colour and countenance of Law, which was ordained to protect the innocent from all oppression and wrong. Neither was this a wrong only to the party thus maliciously vexed, but also to all the Justices of peace resident in that Country, taxing them (*tacite*) as though the demandant could not have justice at their hands in such case, whereas perhaps the demandant never so much as desired the same at any of their hands. And besides, the said Justices of peace (having in all likelihood, knowledge of each party, and their behaviours) or any one of the Justices of Peace, might and would no doubt, yea and ought to have yeelded the demandant, upon request and just cause shewed to them, as sufficient and good security in the countrey, every way (as I conceive it) for his safety, as namely, as many and able sureties, and better knowne, and to have been bound in as great summes, and for as long time if the case should so require. So as what should move them to seeke (with more trouble, charge, and delay to themselves) that security above, which they may have (more speedily, and with lesse charge and trouble)

F.N.B. 40.
Cromp. 40.Fitz. 303.
79.4.
Lamb. 31.

C. 34.

See more
before in
this title.

at

at home; I see not, but onely or chiefly the vexing and oppression of their neighbours, as aforesaid. And for that this manner of oppression grew over common, therefore by the stat. made 21. *1ac. cap. 8.* it is now enacted, that all Proceſſe of the peace, or good behaviour to bee granted out of the Chancery, or Kings Bench, against any person whatsoever, at the ſuit of any other, shall bee void, unleſſe ſuch Proceſſe shall bee granted upon motion first made before the Iudge, or Iudges of the ſame Court, ſitting in open Court, and upon declaration in writing upon oath then exhibited, of the cauſes for which ſuch Proceſſe shall bee granted; and unleſſe that ſuch motion and declaration be mentioned to be made upon the backe of the Writ (the ſame writings to bee there entred of Record.) And if after it shall appeare to the ſaid Courts, that the ſaid cauſes expreſſed in ſuch writing be untrue, then the Court may award coſts and dammages to the party grieved, and may alſo commit to priſon the offenders, untill they pay the ſaid coſts and dammages.

Now to conclude this buſineſſe: If the ſurety of the peace bee taken by vertue of a *ſupplicavit*, then muſt the Juſtice of peace make retorne of the Writ, and certificate of his doings under his ſeale into the Court from whence the *ſupplicavit* did proceed; which may bee done in this manner:

First let him write upon the backe of the *ſupplicavit*, thus:

Executio iſtius brevis, patet in quadam ſchedula huic brevi annexa.

Then may the Certificate or Schedule bee thus, and bee filed to the backe of the Writ.

*The retorne
of the Supp.*

Ego Iohannes Cotton miles, unus Cuſtodum pacis Dom' Regis in Comit' Cantab'rie certifico in Cancellariam diſti Domini Reg. me virtute iſtius brevis ſcitu. *The certi-*
(mihiper A.B. in eodem brevi nominatum, primo deliberat.) perſonaliter coram
me (tali die & loco) venire ſeciſſe T.R. in diſto brevi nominatum, ac eundem T.
ad ſufficientem ſecuritatem, & mancaptores pacis inveniend' ſecundum formam
diſti brevis, viz. &c. (as the Writ ſhall appoint,) compuliſſe: In cuius rei te-
ſtomonium huic preſenti certificationi mea ſigillum meum appoſui, datum apud
C. predictum, in Comitatu predicto, 16. die Ianuarii, anno regni diſti Domini
noſtri Charoli Dei gratia regis &c.

*The retorne
of a Certi-
orari.*

*And of the
Recog.*

The Juſtice of peace may alſo therewith ſend the Recogniſſance, if hee will; or may keepe and ſtay the Recogniſſance untill a *Certiorari* come to him for it.

And if a *Certiorari* bee directed out of the Chancerie to the Juſtice of peace, for removing of this Recogniſſance (becauſe it was not ſent up together with the Certificate, as there was no neceſſity that it ſhould) then that Writ alſo may be thus answered.

Write upon the backe of the *Certiorari* thus:

Virtute iſtius brevis ego Ioh. Cotton miles unus Cuſtodum pacis Domini regis in com' Cantabr' tenorem ſecuritat' pacis, de qua in hoc brevi ſit mentio. (Or unde infra ſit mentio) diſto Dom' Reg. in Cancell' ſuam ſub ſigillo meo diſtinde et aperite miſto, prout patet in ſchedula huic brevi conſueſa.

And then write the recogniſſance verbatim, in this manner hereunder following, and ſhereto ſet your ſeale:

*The ſche-
dule or Cer-
tificata.*

Memorandum quod 16. die Januarij, &c. (reciting the whole recognisance to the end) *In cujus rei testimonium ego prædictus Johan. Cotton sigillum meum apposui. Datum &c.*

And file this schedule (or note of the recognisance) to the backe of the *Certiorari*.

The forme of the *Certiorari* you may see *F.N.B. 81.c. Vide postea; tit. Certiorari. cap. 134.*

Also this forme of certificat may serve where a *Certiorari* is brought to a Justice of peace to remove a recognisance of the peace, taken by him *ex officio*, without any writ of *Supplicavit*. See more *antea sub hoc tit. Suretie, &c.*

And if the Justice of peace shall not returne the *Supplicavit*, nor certificate of his doings therein, untill a *Certiorari* come to him for it, yet it seemeth no danger to him.

Release.

Also if the *Supplicavit* bee against divers, and the demandant will release his prayer of the peace against one of them, then that release ought to bee certified for him, and the writ must bee served and executed for the rest: or else, *Non est inventus*, may bee certified for him, and the writ executed for the rest.

By the Booke 30. *Assisarum plac. 14.* it appeareth, that a man may bee compelled to find sureties both for the good behaviour, and for the peace; for there one that had beaten a woman in Westminster Hall, was bound to the peace towards the woman, and was also bound to the good behavior towards the King, &c.

And so where one shall strike another in the presence of the Justice of peace, the Justice may binde him to the peace, and also to the good behaviour. *Crompt. 140.*

So where one comming to the Sessions to preferre a bill of indictment, or about a Traverse to bee tryed there, &c. if hee shall bee assaulted or threatned &c. the Justices may binde the offender to the peace, towards the party, and to the good behaviour for such contempt to the King and the Court. *Crompt. 141.*

And yet it seemeth that the good behaviour, includeth the peace, and that hee that is bound to the good behaviour, is therein also bound to the peace. See the usuall formes of both Recognisances, *& hic postea.*

But if the Recognisance taken for the good behaviour, bee onely *quod bene segeret, &c.* *Quere* how farre these words will extend. See 2. *Hew. 7. 2. b.* where the Justices held that the good behavior may be forfeit by the number of his people, & by the harnesse (or weapons.) & the like, although they breake not the peace; And they thought that he which is bound to the good behaviour, ought to carry and demean himselfe well in his ap- port, & in his company, not doing any thing which shall be cause of breach of the peace, or to put the people in feare, dread, or trouble; and so shall be intended of all things which concerne the peace; But not in misdoing of other things, which touch not the peace. See *hic postea.*

Suretie for the good Behaviour.

CHAP. 74.

THis suretie for the good behaviour, or good abearing, is granted by the Justice of peace, as well by authority of the Commission of the peace,

peace, the first of *Assign.* as also by force of the stat. of 34. Ed. 3. cap. 1.

And this surety for the good behaviour is of great affinity with that of the peace, and is provided and ordained chiefly for the preservation of the peace (as that other is,) as you may observe out of the usuall formes of the recognisances; yea by some opinions it differeth in little or nothing from that of the peace; but that there is more difficulty in the performance thererof; and the party so bound, may sooner fall into the danger of it, and of his recognisance. For the peace (say they) is not broken without an affray committed, battery, assault, imprisoning, or extremity of menacing; whereas the good abearing may bee broken, and the parties Recogn. forfeited without any of these, as namely,

1 By the extraordinary number of people attending upon the partie bound. See *hic* cap. 72. & 73.

2 Or by his wearing of harnesse, or other weapons, more than usually hee hath done, or more than be meete for his degree. See *ibid.*

3 Or by using words or threatnings, tending or inciting to the breach of the peace.

4 Or by doing any other thing which shall tend to the breach of the peace, or to put the people in dread or feare, although there be no actual breach of the peace.

Yet note, these foure last matters, as they are the breaches of the good abearing, so are they also causes to binde a man to the peace; yea they are breaches of the peace, and a forfeiture of the Recognisance for the peace. *Vide tit. Surety for the peace, cap. 72.*

The booke 2. H. 7. fol. 2. before recited, concludeth, that the Justices were not all certainly advised how those words, *de se bene gerendo*, should bee taken: M. Bro. abridging thereof *tit. Surety*, 12. saith, That it was holden that hee who is bound to the peace, ought to demean himselfe well in his port, (*sc.* Behaviour) & company, not doing any thing that may be the cause of the breach of the peace, or to put the people in feare or trouble; yet the booke seemes to meane this of the good behaviour. See *Fitz. Surety*. 21.

But though this extraordinarie number of attendants, and wearing of harnesse, &c. are breaches as well of the peace, as of the good behaviour, yet it may seeme that this for the good behaviour, doth include the P. and besides importeth some greater or other matters of misbehaviour, and for which the surety of the peace is not to bee granted, (although they also are against the P. and quiet or good government of the land;) and you shall find *hic* cap. 75. that this surety of the good behaviour is grantable in diverse other cases, in which the surety of the peace is not grantable.

This surety of the good behaviour is to be granted at the suit of divers, and those being men of credit, and to provide for the safetie of many; whereas the surety of the peace is usuallie granted at the request of one, and for the preservation of the peace chiefly towards one.

Also this surety of good Abearing, is most commonly granted eyther in open Sessions of the peace; or out of the Sessions, by two or three Justices of peace; whereas that of the peace is usually granted by one Justice of peace, and out of Sessions.

And yet by the words of the Commission, as also by the common opinion

Lamb. 119.
P. R. 18.

Lamb. 119.
P. R. 18.

1. H. 7. 2.

P. R. 22.

14. H. 7. 2. 2.
Lamb. 213.

nion of the learned, any one Justice of peace alone, and out of the Sessions, may grant this surety of the good Abearing (and that either by their owne discretion, or upon the complaint of others) as they may that of the peace.

But this is not usuall, unlesse it bee to prevent some great and sudden danger; (especially against a man that is of any good estate, carriage, or report.)

Also this surety may bee granted at the suit of some one person.

But the more difficult & dangerous this surety is to the party bound, the more regard there ought to bee taken in the granting of it: & therefore, it shall bee good discretion in the Iustices of peace, that they doe not command, or grant it, but either upon sufficient cause seene to themselves; or upon the suit and complaint of divers others (as afore said) and the same very honest and credible persons.

Also this surety of good abearing, is often taken by the Iust. of peace, by vertue of a speciall Writ in the nature of a *Supplicavit*, directed out of the Chancery, or Kings Bench; and then the Iustice of P. upon such a Writ is to proceed as a Minister, (as in case for the peace, *mutatis mutandis.*) vide *antea tit. Surety for the peace, and Supplicavit.*

Once received out of the Chancery such a Writ directed *Custodibus pacis in com' Cant. ac vicecomiti ejusdem com': & eorum cuilibet* (and grounded upon the statute 34. Ed. 3.) commanding us and every of us, to take foure sureties (besides the party) whereof every one should have lands of such a yearly value, or goods of such a value; and to binde the sureties every one in such a summe, and the party in such a summe, *Quod ipse hominibus de cetero erit erga nos & cunctum populum nostrum, & quod nihil in contrarium statuti predicti attemptabit, &c.* and therein I proceeded as a Minister onely.

The party against whom such a *Supplicavit* for the good behaviour shall bee granted out, before hee bee attached thereupon, may goe or send up, and give surety above in the Chancery, &c. (as here before cap. 69. for the peace) and thereupon hee shall have a *superfed.* out of that Court, directed to the Iustices of P. and Sherife, & to every of them, commanding them to surcease to arrest the said party, or to doe any other execution of the said Writ of *supplicavit*; and that if (before the comming of the said *superfedas*) they have taken any such security for the good behaviour of the party, that then they presently release the party of such surety found by him, the former writ of *Supplicavit* notwithstanding.

For what cause this surety for the good behaviour shall be granted. CHAP. 75.

1 **I**T is chiefly to be granted (by the Iustices of P. out of their Sessions) in these cases following; viz. First, against common Barretters, common Quarrellers, and common Breakers or perturbors of the peace. See what Barretters be, *tit. Barretters ante.*

2 Also it is grantable against Riotters. See hereof before, *tit. Riots.*

3 Also against such as shall lye in wait to rob, or shall bee suspected to lye in wait to rob, or shall assault, or attempt to rob another, or shall put passengers by the way in feare or perill.

4 Also against such as bee generally feared (or suspected) to bee robbers

bers by the high-way.

5 Also against such as are like to commit murder, homicide, or other grievances, to any of the Kings subjects in their bodies.

6 Also against such as shall practise to poyson another.

I lately granted the good behaviour against one, for that hee had bought Ratsbane, and mingled the same with corne, and then wilfully and maliciously did cast the same among his neighbours fowles, whereby most of his fowles died, and it was holden to bee a good cause to bind the offender over, by the whole Bench; and since I have known it allowed as a good cause by the Judges of Assise.

7 The Justice of peace also upon his owne discretion (and without complaint) may bind to the good behaviour any other person, which in his presence or hearing, shall misbehave himselfe in some outrageous manner of force, or fraud; and may commit such person to the gaole if he refuse to be bound. *Sir Francis Bacon, 11.*

It is also grantable against such as be of evill name and fame, generally, but more specially against such as are defamed or detected in any of these particulars following:

1 First, against those that are greatly defamed for resorting to houses suspected to maintaine Adultery, or Incontinency.

2 Also against the maintainers of houses commonly suspected to be houses of common Bawdrie.

One that had such lewd women found in his house, was bound to his good behaviour, (by *Wray, Anderson, and Manwood,*) 28. *El.*

3 Also against common whore-mongers, and common whores; for (by good opinion) Avowtry or Bawdry is an offence temporall, as well as spirituall, and is against the peace of the land.

Upon information given to a Constable, that a man and a woman be in adulterie or fornication together (or that a man and a woman of evill report, are gone to a suspected house together in the night) the officer may take company with him, and if he find them so, he may carry them to prison; or he may carry them before a Justice of peace, to find sureties for the good behaviour.

4 Also against night-walkers, that be suspected to be pilferers or otherwise like to disturbe the peace, or that be persons of evill behaviour, or of evill fame or report generally, or that shall keepe company with any such, or with any other suspicious persons in the night, 13. *H. 7. 10.* & 13. *E. 1. winch. cap. 4.*

Against such as by night shall evesdrop mens houses.

Against Night-walkers that shall cast mens gates or carts, &c. into ponds, &c. or shall commit other like misdemeanors or outrages in the nighttime.

5 Against suspected persons, who live idly, and yet fare well, or are well apparelled, having nothing whereon to live; (except upon examination, they shall give a good account of such their living.)

6 Against common haunters of Ale-houses, or Taverns, and common gamesters; but more specially if they have not whereon to live.

7 Against common Drunkards; and yet by the statute 4. *Iac. 5.* such offenders must bee thereof lawfully convicted: *sc.* by presentment of the

the offences at the Assises, Quarter sessions of the peace, or in the court Leet, and thereupon a due proceeding to conviction, &c.

But now by the statute 21. *Iac. cap. 7.* any one Justice of peace (or any head officer in any Citie, &c.) hath power to convince any person of Drunkenness, &c. See *hic antea sit. Alehouses.*

And for the second offence of Drunkenness, any one Just. of peace may (upon his owne view, confession of the party, or prooffe of one witnesse upon oath,) as it seemeth, bind such offender to the good behaviour, 21. *Iac. cap. 7.*

8 Against all such as use to goe on message of Theeves. See Stat. 18. *E. 2. P. leet. 1.*

For all these former offenders and the like, are cvill members in the Common-wealth, and such their demeanor and living is greatly to be suspected (and besides doe seeme to bee more properly said against the peace of the land, than *Avoutrie* in the case before, 1. *H. 7. 7.*) and therefore it seemeth reasonable, just, & expedient, that the Justices of peace (upon their discretion) should convent such persons before them, and examine them and their courses of life; and if they cannot yeeld a good reason and account of such their courses, then to bind them to their good behaviour.

Also the good behaviour seemeth grantable, against such as shall make false out-cries, or shall raise Huy and cries without cause, for these are disturbances of the peace. *Cromp. 179.*

If one man doe levie huy and cry upon another without cause, either of them may be attached (and bound over) as disturbers of the Peace, *P.R. 156.29. E.3. Fitz. Trespass 252. tamen quere* concerning him upon whom the huy and cry is levied: Except that he be either a man of evill fame, or that there be some felony committed, &c.

Also it seemeth grantable against Cheaters and Cofiners.

Libellers (it seemeth) also may be bound to their good behaviour, as disturbers of the peace, whether they be the contrivers, the procurers, or the publishers of the Libell: for such libelling and defamation tendeth to the raising of quarrels, and effusion of blood, and as speciall means and occasions tending and inciting greatly to the breach of the peace.

Libellus, literally signifieth a little Booke.

By use it hath also two significations: First it signifieth the originall Declaration of any action in the Civill law.

Secondly, it signifieth a criminous report of any person, cast abroad, or otherwise unlawfully published, and is called an infamous Libell.

Another describeth it thus, *Famosus libellus est qui impingit delictum aliquod notabile.*

And yet this libelling may be done after divers sorts or manners.

1 By scandalous writings, be it in booke, ballad, epigram, or ryme, either in meeter or prose, as aforesaid.

2 By scandalous words, scoffs, jests, taunts, or songs, maliciously repeated or sung in the presence of others.

3 By pictures or signes, as by hanging of pictures of reproach, or signes or tokens of shame or disgrace neere the place where the party thereby traduced, doth most converse: as the picture of the Gallows, Pillorie, Cucking-stoole,

stoole, Hornes, or such like. *Co. 5. fol. 125.*

And in such cases it is not materiall whether the Libell be true or false, or the party thereby scandalized, be living or dead, or be of good name or evill.

And these libellors, as also their procurers, and the publishers thereof, may be punished in divers other manners :

- 1 Either they may be indited for the same,
- 2 Or they may be sued in the Star-chamber,
- 3 Or the party grieved may have his action upon the case, and recover his damages, *Lib. Intrac. fol. 13. Mes cest semble quant les parols sont actionable.*

If therefore any man shall find a libell, and would keepe himselfe out of danger ; if it be made against a private man, the finder may either burne the same, or else hee must presently deliver the same to some Magistrate.

But if it concerne, or be made against a Magistrate, or other publike person, the finder ought presently to deliver the same to some Magistrate, to the intent that by the examination and industry of such Magistrate, the author may be found out.

Also this suretie of the good behaviour, is used to be granted against the putative father of a bastard child. *Vide sit. Bastardy.*

It seemeth also grantable against unlawfull hunters in Parkes, after their examination taken, *vide antea sit. Hunting.*

Also it shall be granted against him that shall abuse a Justice of peace, Constable, or other officer of the peace in executing their office.

A. assaulted a Constable in doing his Office, it is a good cause to bind *A.* to the good behaviour. *Fitz. Barr. 202. Cromp. 135.*

The Sherifes Bailife, upon a warrant from the Sherife (to make execution of the goods of *A.*) went into the house of *A.* finding the doores open, and *A.* shut the doores upon the bailife, and so detained him as a prisoner in his house, and Sir Robert Houghton one of the Judges of the Kings Bench, thought it a good cause to grant out processe *de bene gerendo*, against *A.* for thus abusing of an officer of the law. *Anno 17. Jacobi Regis.*

A Justice of peace seeth a man breake the peace (*scz.* to make an Assault, or Affray upon *A.*) and he chargeth him to keepe the peace, and the other answereth that he will not, the Just. of peace may binde him to the good behaviour.

For if (as one saith) contempt, or contumely, used to the person of a mans better, neither Policie for example, nor Religion for peace, may tolerate, much lesse to use contempt towards, or to abuse such as are in authority, specially when they are in executing their office.

Nay, it seemeth that he which shall use words of contempt, or *contra bonos mores*, against a Justice of Peace, though it be not at such time as he is executing his office, yet he shall be bound to his good behaviour.

If a Citizen or Freeman of a citie or towne corporate, shall use words of contempt, or *contra bonos mores*, against the chiefe officer of the citie or towne, or his brethren, they are good causes to commit him to prison untill he shall find sureties for his good behaviour : for obedience
and

and reverence ought to be yeelded to the Magistrate, for that they derive their authority from the King; and *obediencia est legis essentia*.

Also he that shall abuse a Justice of peace his Warrant, may be bound to the good behaviour. *Vide postea sit. Warrants.*

A man complaineth of a Riot, or Forcible entry, so that the Justices of peace are assembled to inquire thereof, and then the party that complained will not prosecute the matter, it seemeth that the said Justices of peace may binde him to his good behaviour for this deluding them.

And so of such as shall charge another with Felonie before a Justice of peace, and yet will not give evidence, &c. *Vide antea sit. Felonie.*

A. is bound to keepe the peace against B. onely, and getteth a *Superfedeas*, and after B. releaseth him; after A. is arrested for suretie for the peace at another mans suit, and sheweth this first *Superfedeas*, it seemeth he shall be bound to his good behaviour for this deceit. Cromp. 19.

Yea whatsoever act or thing is of it selfe a Misbehaviour, or is against the good behaviour, is cause sufficient to binde such an offender to the good behaviour.

By Statute. Also by the expresse words of the statutes, the offenders hereunder named shall be bound to their good behaviour:

1 Disturbers of Preachers, 1. M. 3. P. 1.

2 Destroyers of Fish ponds, &c. or stealers of Fish, (after lawfull conviction, &c.) 5. Eliz. 2 1. P. Fish 7.

3 Takers of Hawkes, or Hawkes egges out of other mens grounds, after lawfull conviction, &c. 2. Hawkes 1. 5. Eliz. 2 1. P. Hawk 1.

4 Unlawfull stealers, hunters, or killers of any Deere or Conies in the night or day time, in any Parke or Warren, after lawfull conviction, &c. See the stat. 5. Eliz. cap. 21. 3. Hen. 4. 7. Hen. 4.

But all these former offenders must be bound at the Sessions.

5 Popish Recusants, absenting themselves from Church twelve moneths; these shall bee bound in the Kings Bench, 23. Eliz. 1. P. Recusants 1.

6 He that is attainted of felony, and hath a pardon for the same, shall within three moneths find sureties for his good behaviour; but he shall bee bound before the sherife and coroners, who shall returne the same into the chancery. 20. E. 3. P. Pardon 5.

Also he that is acquitted of felony, if he be of evill fame, or of evill behaviour, it seemeth the Justices of peace upon their discretion, may binde him to his good behaviour. *Cromp. 135.*

7 Such persons as shall disturbe the execution of the stat. 39. Eliz. 4. concerning the punishing, or conveying of Rogues; any two Justices of peace may binde them to their good behaviour. *Vide antea sit. Rogues.* 39. Eliz. 4.

8 So of such as shall disturbe the execution of the stat. for the releefe, setting on worke, or setting of the poore. *Vide antea sit. Poore.*

9 The mother of a Bastard child (which may bee chargeable to the Parish) for her second offence shall be committed to the house of correction, there to remaine untill she can put in security for her good behaviour, &c. *Vide antea sit. Bastardy.* 7. Jac. 4.

10 Such as have their houses infected, or be themselves infected with the plague, and being commanded to keepe their houses, shall disobey, &c. they

they shall be bound to their good behaviour, for one whole yeare, *vide antea tit. Plague.*

What Act shall be a forfeiture of the recognisance taken for the good be- *Forf. of the*
haviour, see herebefore, *cap. 74.* *Recogni-*

cap. 121. Also it seemeth, that the party bound to his good behaviour for of-
fending against any the statutes here before mentioned, if hee shall after-
terwards offend against any the said statutes, he shall thereby forfeit such
his Recognisance.

To be Drunken, is a breach of the good behaviour, as Sir *Nicholas*
Hyde did deliver it his charge at Cambridge Lent Assises, *Anno 3.*
Caroli Regis.

The forme of a warrant for the good behaviour, *Vide postea tit. warrants.*
cap. 121.

The forme of the Recognisance for the good behaviour, *Vide postea tit.*
Recognisances. cap. 123.

cap. 126. Whether the surety of the good behaviour (taken upon complaint) *Release.*
may be released by any speciall person; some doe doubt it, because it
seemeth more popular than the surety of the peace; yet others doe hold
that it may be released, either by the Justice of P. himselfe that tooke it,
in discretion, or by the party upon whose complaint it was granted, even
as that for the peace may.

cap. 121. It seemeth also a *Supersedeas* of the good behaviour may be granted by *Supersedeas.*
by the Justices of peace (as well as for the peace, *mutatis mutandis*) upon
cap. 127. good sureties taken by the sayd Justices, of the party, to bee of good be-
cap. 128. haviour.

If a man be bound to the good behaviour (before Justice of peace)
and to appeare at the next Assises or Sessions, yet the party bound may
by a *Certiorari* remove the Recognisance (into the Chancery, or Kings *Certiorari.*
Bench) before the day, and then he shall not need to appeare at the As-
sises, or Sessions; for they shall have no Record, whereupon he may be called
there.

Forcible Entrie. and forcible Detainer. CHAP. 76.

cap. 128. *Comp. 47.* **T**He Common Law (being the preserver of the common peace of the
land) hath alwaies abhorred force as the capitall enemy thereto, *Co. 3.*
12. and yet, before the Reigne of King RICHARD the second, the Com-
mon law seemed to permit any man to have entred into lands and tenements
with force and armes, and also to have kept and detained them with force,
where his entry was lawfull.

cap. 127. *cap. 128.* *cap. 129.* *cap. 130.* And at this day, if a man doth enter into any lands or tenements
with force, (or multitude of people) where his entry is lawfull, hee is
not punishable by action, either at the Common law, nor (by action)
upon any statute; for where the title of the plaintiffe is not good, there
hee hath no cause of action, although the defendant doth enter with
force: but in such case he that entred with force must be indicted upon
the statute: or otherwise complaint may bee made thereof to the Justi-
ces of peace: and as well upon such indictment, as upon such com-
plaint, the offender shall be punished; yet the party (*ousted*) shall not be
restored.

restored without indictment, and the force thereby found. *vide antea tit. Forcible Entry.*

And for the better restraining of such force and Forcible Entries into lands and tenements, and to inflict condigne punishment upon the offenders therein, it was first provided by the statute 5. *Rich. 2.* that no man should enter into any lands or tenements, with force or multitude (though he had goodright, or title to enter,) but should Enter onely in peaceable and lawfull manner. See *Pla. 86. b.*

But this statute provided no speedy remedy, nor extended to holding with force, nor gave any speciall power therein to the Justices of peace (but upon a generall enquiry, in a generall Sessions of the peace, and not otherwise) and therefore by another statute made 15. *Rich. 2.* it was further provided, that if any man should deteine (or hold) with force, after such Forcible Entry made, upon complaint thereof made to any Justice of peace, the same Justice shall presently take and come with the power of the County, and shall goe and view the same, &c. and if the same Justice doe find any holding the same forcibly, that then they should be imprisoned by the same Justice, as convict by the Record of the same Justice.

Yet neither of the former stat. extended to those that entred peaceably, and then held with force, nor yet doth give any remedy, if the parties who made the Entry with force, be removed before the coming of the Justices of peace, nor yet ordained any paine against the Sherife, if he did not obey the precepts of the said Justices, for to execute the said statute, when the said Justices would enquire of the same. And therefore the statute of 8. *H. 6.* doth give remedy, first where any man shall enter with force, or shall enter peaceably and after detaine, hold, or keepe possession by force.

Also these two last statutes of 15. *R. 2.* and 8. *H. 6.* doe inable any one Justice of peace to give present remedy, *viz.* to remove the force, and commit the offenders, in cases of Forcible Entry, or holding against the aforesaid statutes.

And the said statute of 8. *H. 6.* extendeth further, reaching the offenders if they were removed or gone before the coming of the Justices; giving the Enquiry, and Restitution; and also punishing the Sherife that shall not obey the precepts of the Justice in this behalfe.

So that these statutes doe now give full remedy, and doe prohibite, & are made against these three degrees or sorts of force, *viz.* against,

- 1 Such as enter peaceably, and then hold forcibly.
- 2 Such as enter with force, and then hold peaceably.
- 3 Such as doe both enter forcibly, and hold forcibly.

I have (here before) already shewed in some measure how the Justice of peace shall demean himselfe in the execution of these statutes; now I will proceed to give him some further light in this businesse, in these particulars following.

1 First, what is a forcible Entry, and what is a forcible holding, within the meaning of these statutes.

2 Who may commit a Forcibly Entry, &c. and upon whom.

3 Where

- 3 Where a force, or forcible holding, is justifiable, or lawfull.
- 4 What and how many severall remedies the party hath, that is so put out, or kept out of his possessions.
- 5 The manner of proceeding of the Just. of peace by Enquiry.
- 6 Of restitution to be made to the party so put out; by whom, and to whom.
- 7 What causes there may bee for staying the Justice of peace from making Restitution.

What is a Forcible Entry, or holding, within these Statutes. CHAP. 77.

Our Law taketh knowledge of two manners of force; the one may be termed a force in judgement of Law, which accompreth everie private trespass to be a force; so as if I doe but passe over another mans ground without licence, hee may have his action of trespass against me, *Quare vi & armis, &c.*

The other manner of force is more apparent, and alwayes carrieth some fearefull shew, and matter of terror with it.

This last sort of force is that which is prohibited by these statutes: & therefore note, that every force punishable by these statute, must have one of these two badges, *sc.* it must be either *Manu forti*, with force or strong hand, or *Multitudine*, with multitude of people, *Lambert, 145. & 5. R. 2. cap. 7.*

Manu forti, viz. either with apparent violence (in deed, or in word) offered to the person of another, as threatning speeches, turbulent behaviour, or actuall violence; or else that they be furnished with offensive weapons (by them not usually borne;) and this may bee done by one person onely. *Vide postea sub hoc tit.*

Multitudine, sc. with company more than usually they have attending on them, *10. H. 7. 12.* Now by some opinions the Law calleth a multitude, when there be ten or more in one company, *Multitudine decem faciunt.*

And yet Sir Edward Coke, upon *Listleton 257.* sayth, that he never read it restrained by the Common Law to any certaine number, but left to the discretion of the Judges, or Justices.

Now one may commit a force: and three may commit a Riot &c.

If therefore one or more persons shall come weaponed (especially with weapons not usually borne) to a house or land, and shall violently enter thereinto, this is a forcible entry within the meaning of these Statutes. *Forcible Entry.*

Much more, if (being so entred) he or they shall there offer violence, or feare of harme to the person of any that is in possession thereof; most of all, if he or they shall forcibly and furiously expell and drive another out of such his possession.

So is it, if one shall enter peaceably (the doore being open, or onely latched,) and after he is in the house, hee shall forcibly put another out of his possession.

So is it, if he or they which shall enter peaceably, shall after their entrie offer apparent violence, threatnings, or feare of harme to the person of any that is in possession, to the intent to get him out, and make him

leave the possession, though they do not put him out of possession, much more if they get the possession thereby.

If he or they that have entred peaceably, shall after use words to any in possession to this effect, as to say they will hold it or keepe it, though they die for it, or in spight of the other, or such like, or other threatening words, this maketh it a forcible entry.

So it is, if divers persons shall come with weapons (not usually borne by them) to a house that is open, or to ground, and shall there enter peaceably, without any disturbance; yet this is a forcible entry, for it shall be intended that they would have used force, if they had been resisted. Lamb. 146.
Crompt. 49.

So it is, when the master entred into an house, or land, being attended with a greater number of servants than usually doe wait on him. Co. L. 297.
10. H. 7. c. 1.
Br. Forc. 30.
Lamb. 146.

Note, that though a man do actually use no force in his entry, yet if he doe come so appointed, either with weapon, or company, that other men may be reasonably affraid that hee mindeth to make his way by force, rather than he will faile of his purpose, it seemeth to be a forcible entry.

And if three or more, shall enter peaceably, (upon another being in possession) & shall continue there peaceably, though this be noe forcible Entry or Deteiner, yet it may prove a Riot in regard of the Number.

Now there are two sorts of force as is aforesayd. *sc.*

1 An actual force; as with weapons, or number of persons, &c. not usual.

2 A force implied in Law; as every Disseisin, Rescous, and Trespasse implieth a force, and is *vi & armis*. *Co. L. 257.*

A Trespasse Also it seemeth that every entry into another mans house, or ground which is made with force (*sc. manus forti*, or *cum multitud.* either with apparent violence offered to the person of any other, or furnished with weapons, or company, which may offer feare) though it bee but to cut, or take away another mans corne, grasse, or other goods, or to fell or crop wood, or doe any other like trespassse, and though he doe not put the party out of his possession, yet it seemeth to be a forcible entry and an actual force, punishable by these statutes. See *Lamb. 145.*

But if the Entry were peaceable, and after such entry made, they cut or take away any other mans; Corne, Grasse, Wood, or other goods, without apparent violence, or force, though such acts are accounted a Disseisin with force, yet they seeme not to be punishable by these statutes, *sc.* the Just. of peace are not to remove, imprison, or fine such offenders. Lamb. 145.

Also, if one or more shall enter into another mans house or land peaceably, and after his or their Entry, shall by force or violence, cut or take away any Corne, Grasse, or Wood, &c. or shall forcibly & wrongfully carry away any other good there being; this seemeth to be a forcible entry, punishable by these statutes. Crompt. 49.
11. H. 4. c. 11.

So is it, if a man shall distraine with force, for a Rent (bee it due, or not due) this doth countervaille an Entry with force. *Lamb. 147. Br. force. 1.* 20. H. 6. c. 11.

And in these cases of Trespasse only, the Justice of peace (upon complaint to him made) may, as it seemeth, remove such force; and upon view thereof, may imprison and fine such offenders.

If

If a disseisor hath entred peaceably, and being entred, shall pretentiously threaten to kill the disseisee (if he re-enter) this seemeth a forcible entry in the disseisor. See more *postea sub hoc tit.* By words.

But note, that a forcible entry cannot be without an actual entry, for the words of the statutes be, Whosoever doth enter, &c.

Note also, if one that hath right to enter upon land, shall goe with divers in his company, and with weapons, over the land whereto hee hath right, to the Church, Market, or some other place; this is no entry with force, except he shall expresse his intent, that hee doth enter there claiming the land.

Note also, that if a man shall enter with force (into house or land) although hee obtaineth not, nor getteth the actual possession thereby, yet shall he be imprisoned & fined for the only entering with force (as it seemeth) Se the statute: but restitution is not to be bemade, but onely where there is a forcible putting out, or a holding out, of another out of his possession and found by a Jury.

If by faire meanes, a man (whose entry is lawfull) shall perswade or intice them which are within the house, to come out, and then (the doore being open, or shut by the latch onely) hee shall enter peaceably, without multitude, offensive weapons, or other violence; this entry seemeth to be justifiable. Lawful.

So is it, if he shall enter peaceably, and then by gentle perswasions can send them out that are within the house, and after shut the doore, and keepeth them out; this seemeth justifiable; so that afterwards he holdeth it not forcibly, nor useth violence or threatening speeches.

So is it, if I shall take a man being out of his house, and then I doe put or send into the house my servant (or some other) in peaceable manner, and doe hold away the other by imprisonment of his person; this is noe forcible entry nor detainer within these statutes, but a false imprisonment, punishable by action onely.

So it is, if hee whose entry is lawfull, shall enter peaceably into his house (the doores being open, or shut by the latch onely) and being so entred, shall continue and abide there peaceably; this is justifiable. And if they which were before in possession, shall put or thrust him out forcibly, this is a forcible detainer of their parts. See more hereof *sub hoc tit. postea.*

Forcible Detainer, must bee understood of a forcible detaining of the possession of lands or tenements, and not of the person of a man, as before. Forcible Detainer.

Note also, though the entry were at the first peaceable, and lawfull, yet if there be after a holding by force, it is punishable by the statute, except where there was at the first a lawfull and peaceable entrie, & thereupon a lawfull possession, peaceably continued by the space of three yeares together, without interruption; for there a man may hold and keepe such possession with force against all others (saving against the Kings officers.)

If the Justice of peace shall come to the house or place, that is supposed to be holden with force, and there shall find the doores or gates shut,

shut, and he or they within shall deny him to enter, (or will not suffer him to enter) this is a forcible holding and detainer, though there be no weapons shewed or used, and though there be but one person in the house, or upon the ground.

So it is, if when the Just. of peace entreth the house or ground, he shall find there any persons in harnesse or otherwise armed, or having harnesse, armour, or other weapons (not usually borne by them) lying readie by them, this is forcible Detainer.

So it is, if the Justice of peace shall find in the house, any great number of people, other than the ordinary family, or company.

Also if a man shall enter peaceably into a house, and after shall bring into the same more weapons than he and his ordinary family doe usually weare; or shall make any use of such weapons as he doth find in the house, to defend his possession therewith; these are forcible detainers within these statutes.

If a man that hath peaceably entred into an house, will bestow men with force, (sc. with harnesse, gunnes, or other weapons) in some other house or place, not far distant, to the intent that they may be ready to assault such as shall enter upon him; this is a Detainer with force.

So is it, if the disseisor of an house or land, shall forestall the way of the disseisee, with force and armes, so that the disseisee dareth not enter, or come neere thereto for feare of death, &c.

So if a man shall distraine for a rent Service, or a rent Charge, & a Refcous shall be made unto him; this is a disseisin with force. Co. L. 161. b.

So is it, if a man shall keepe his cattell in another mans ground by force, claiming Common there, where he hath no Common; and in this case, the Just. of peace upon complaint to him made, may remove this force, and upon view thereof may record it, and may commit such offenders to prison, and may fine them therefore, as it seemeth, but cannot award restitution.

Also there may be a forcible detaining of possession by word onely without any forcible act.

As if A. hath wrongfully (though peaceably) entred into the house, or upon the land of B. and hath put out B. and shall presently threaten or say to B. that if hee doe come thither againe to enter, hee will kill him, this seemeth a forcible entry by A. And if B. shall afterwards come againe to make his entry, and then A. shall threaten to kill him if hee entreth there; this is a forcible detainer in A.

And it seemeth that to threaten to maime, beat, or to doe other bodily hurt to B. in the case aforesayd, amounteth to a forcible Entry or Detainer, for that death may ensue upon such beating or hurt. See 39. H. 6. 50. 7. E. 4. 21.

But to threaten to burne the house or to spoyle his goods therein, (if B. shall come thither, to enter againe) this seemeth not to amount to any such matter, for that B. may afterwards have his action for the burning of his house, or spoiling of his goods, and shall thereby recover damages, to the value thereof, &c.

Also when B. shall come to make his Entry as aforesaid, if A. shall say

to him, that he will not open the doore, this is no forcible detainer.

Crompt. 73. So it is if *A.* be in possession of a house, or hath a lease thereof at the will of *B.* and after *B.* entrencheth into the house, and commandeth *A.* to goe out, and to leave him the possession, and *A.* will not goe out, this is no force; for refusing, or denying onely to goe out, is no force, unless there be with all some forcible act or threatening speeches: *vbi factum nullum, ibi forcia nulla*, where there is no fact, there is no force. *Co. 4. 43.*

A. morgageth his house to *B.* upon condition, that if *A.* shall pay to *B.* such a day 40. li. then the sayd mortgage (& feoffment to be voyd) and by agreement of them both, *A.* the mortgager continueth the possession untill the day of redemption, at which day *A.* payeth not the 40. li. and after *B.* cometh to re-enter, and *A.* keepeth the possession by force, this is a detainer by force in *A.* This was *M. Rich. Godfreyes* opinion betweene *Willowes* and *Thurger*.

Crompt. 69. The disseisor maketh a gift in taile to *B.* who keepeth the land with force at the time when the disseisor maketh his claime, which claime is made within the view, so neere as he dareth, for feare of death, battery, or other bodily hurt, if *B.* after such claime shall continue the possession with force, hee may be thereof indited, &c. for this amounteth to a new Entry, and a detainer with force by *B.*

And note, that wheresoever mine entry is lawfull, if the possession be detained or holden from me by force, I may pray the aide of the Justices of peace to remove such force as it seemeth.

Lamb. 149. Crompt. 70. P. 8. 49. If a man hath a rent or common of pasture out of another mans land, and comming to distraine for his rent, or to use his Common, he is so forcibly resisted by the tenant of the land, that hee cannot, or dareth not, either distraine for his rent, or take the benefit of his Common; this is a holding with force in the tenant, and punishable by these statutes.

Crompt. 59. So it is, if the tenant of the land shall forestall the way with force and armes, or shall threaten him (that hath the Rent or Common) so that he dareth not to come to distraine for his rent, nor to take his Common.

Hill. So it is, if a man shall distraine for his rent, and the tenant of the land shall make rescous with force and armes.

Br. Imp. 70. And in these cases (of a rent, or common) the Just. of P. (upon complaint to him made) may remove such force, and upon view of such force, may record it, and may therefore imprison and fine such offenders, but cannot award restitution, (for cannot restore the party to his rent or common, which are to be taken, and used in another mans land) for restitution is not to be made, but onely of house or land, as you may see *The persons* hereafter.

Lamb. 174. Co. L. 237. One person alone, may commit or make a forcible entry, or detainer, if so be he doe it with offensive weapons not usually borne, or doe use turbulent behaviour, violence, or threats, &c. to the affray or terrour of others; or doe refuse to suffer the Justice of peace to enter.

Crompt. 63. An infant of the age of eightene years, by his owne act may commit a forcible entry or detainer: & so he may though he be under eightene, if so be that he be of the age of discretion; (for of the age of 14. yeares.) See *Perk. f. 10. b.* and it seemeth the Justice may fine him therefore. But yet

yet it shall be good discretion in the Just. of peace to forbear the imprisonment of such infants. See *B. imp.* 43. 45. 75. 101. & *hic postea tit. Imprisonment.*

For an Infant shall suffer no imprisonment or corporall paine for any offence by him committed against any statute, wherein an Infant is not expressly named.

But yet he may forfeit the penalty of a penall statute, and so by a penall statute may forfeit and lose his goods, if he be of yeares of discretion. See *Doctor & Stud.* 147. 148.

And an Infant of the age of eightene yeares, may be a disseisor with force, and may be imprisoned for the same. 22. *Edw. 4. fol. Old Nat. Br.* 128.

That Infants may be imprisoned by expresse words in some statutes, See *hic cap.* 45.

But if an Infant commandeth another to enter, or hold with force to his use, which is done accordingly; yet the Infant shall not be punished for such offence, for his commandement therein was void.

Also a *Feme covert*, (by her owne act) may commit a forcible entrie or detainer; and upon the Justices view of the force, she shall be imprisoned therefore, (and it seemeth also she may be fined in such case:) But such fine set upon the wife, shall not be levied upon the husband; For the husband shall never be charged for the act or default of his wife, but when he is made a party to the action, and judgement given against him and his wife, *Co. 9. 72. & Co. 11. 61.*

Divers doe enter with force to the use of *A.* who is not then present with him, but doth after agree thereto; this agreement after maketh *A.* to be a disseisor, but not to be punished for the force, *quare* if *A.* had counselled, consented, or agreed thereto before the entry: it seemeth that a commandement, consent, or agreement before or after, though it may make one a disseisor, yet it is not to be punished by the Just. of peace, upon these statutes, for that a forcible entrie cannot be adjudged against a man, without an actuall entrie be also made by him or he at least present.

Consent.

But if *A.* that shall command or counsell others thereto, shall also be present at the time of the entry, although he doth then nothing, yet he is now become a principall, and punishable by these Statutes, *Vide* 17. *Aff. pl.* 14.

If divers doe come in one company, to enter into lands, &c. where their entrie is not lawfull, and all of them (saving one) did enter, and demean themselves in peaceable manner, and one only doth enter with force, or (after entry made) doth use force and violence, This shall be adjudged a forcible entrie in them all (although the force were against their wills;) for where divers doe come in one company to any place, to the intent to doe any unlawfull thing, be it robbery, homicide, riot, affray, or any trespassse, here the act of one of them shall be adjudged the act of all of that part that are present, and every one of them shall be adjudged a principall doer, although they stand but by and doe nothing. So it seemeth, though some of them came without any intent of evill

*Comp. 64.
16. Ali. 7.
Br. imp. 45.
13.
See more
after in the
tit. of R. 10.*

*2. H. 7. 19.
Br. force 21.*

*Com. 84.
112. & 115.
See heretofore
after in the
tit. Murder.
Fitz. Coram.
114. 350.*

evill, if they came together in company with the other offenders, or if they came after, yet if they be either ayding, or countenancing to the offenders, they shall be also adjudged principall doers as well as the other. And yet *Finex* chiefe Justice, 2.H.8. made a difference where their intent at the first was to doe an unlawfull act, and where not. *Cre. 161.*

Co. l. 4. b. 210. 112. An indictment upon the stat. of 8.H.6. for the K. is not good; for the K. cannot be disseised, nor put out of his freehold; neither can the K. bring any action upon the stat. of 8.H.6. nor any other action which might prove him out of poss. of the land. *P.R. 39. b.* *The persons put out.*

Comp. 9. And if the K. termor be put out by force, hee cannot prefer a Bill of indictment (upon the stat. of 8.H.6.) that hee was put out, and the King disseised: But he must have an Information of Intrusion in the Exchequer. *The Kings Tenant.*

Yet it seemeth, that upon complaint made to the Just. of P. by the K. termor, of any such force, the Just. of P. may, nay ought so remove the force, & upon his view thereof to record it, and to commit the offenders to prison, and may fine them, and after such force removed, the Kings termor may presently re-enter (if he can) in peaceable manner.

If a forcible entry or detainer shall be made upon any lessee for years, tenant at will, or upon a copiholder, whether it bee by an estranger, or by the lessor, or by the lord, the Ju. of P. upon their view thereof, are to remove such force, and may commit to the prison, the parties which made such entrie, or which shall hold it with force, and may fine them: But whether the Just. of P. might make restitution, and set them (sc. the lessee for yeares, tenant at will, or Copiholder) into their possessions againe, hath beene much questioned. *Lessee for yeares. Copiholder.*

Lamb. 49. Some hold opinion that the Just. of P. might put them in possession againe, and of this opinion was M. Marrow, and M. Lambert: and to maintain this opinion, these reasons may be given.

First, for that the words of the old statutes seemeth to warrant it: For the stat. of 15.R.2. in the preamble thereof, as also the stat. 8.H.6. in the body thereof, hath this word [Possessions] which word most properly doth extend to a lease for yeares, &c.

Again, that clause of the statute 8.H.6. which provideth the restitution, is thus; If it be found that any doth contrary to this stat. then the said Just. &c. shall put the partie so put out, in full possession, &c.

Now it cannot be denied, but that hee which by force expulseth lessee for yeares, tenant at will, or a copiholder, doth contrary to this statute, also they be the parties put out.

Again, the same mischief and inconvenience, which these lawes doe labour to remove; is to lessee for yeares, tenant at will, and to the copiholder.

Co. 11. 32. 31. Plow. 1. 8. And we may find it usuall, that where statutes are made for to remedy any common mischief, there (to helpe things in the same degree) one action, thing, place, and person, hath in construction beene taken for another: And a good expounder (saith Sir Ed. Co. 11. 34.) maketh every sentence to have his operation to suppress all the mischiefs before the said act, and principally those that are specified in the act.

And

And againe, sayth hee, it is the office of the Judges alwayes to make ^{Co. 3. 2. 12. 77} such construction of statutes as may repress the mischief, and advance the remedy, and to suppress all evasions which may continue the mischief, and to adde force and life to the cure, and remedy, according to the true intent of the makers of the Statut. Co. 11. 73. b. & Co. 3. 7.

Others hold the contrary, *sc.* that Lessee for yeares, nor a Copiholder, or Tenant at will could not have restitution by the hands of the Justice of peace: and this seemed to bee the common opinion; their reason was;

For that the words in the statute of 8. H. 6. (in that clause which specially provideth the restitution) are thus; The said Justices, &c. shall reseiſe the said lands or tenements, and thereof shall put the party so put out, in full possession, &c. which words, [lands or tenements] are onely to be understood of them that have inheritance, or a freehold at the least: but to this it may be answered, that the said statute of 8. H. 6. ^{Rast. 171} in the body thereof hath these words: Where any doe make any forcible Entry into lands, tenements, or other possessions, or them hold forcibly, &c. which words [Possessions] extendeth to a lease for yeares, &c. And then the words [Possessions] being in the same stat. wee shall find that a stat. is to be expounded upon all the parts thereof together, and not upon one part alone by it selfe: to which purpose, see *Lincolne Colledge Case*, and Doctor ^{Co. 1. 19. b. 2. 5. 117.} *Bonhams Case*, in Sir Edward Cokes Reports.

But it seemed to those which held this last opinion, that if a Lessee for yeares, Tenant at will, or a Copiholder, be forcibly put out, or held out by any estranger, if they will have restitution, their indictment must be made and preferred in the lessor, or Lords name, and the Jury ^{Cromb. 161.} must find that the lessor, or Lord of such copihold, is disseised, and the lessee or Copiholder, is put out with force: And hereupon the lessor or lord shall have restitution; and so by their restitution, their lessee or Copiholder is restored also; but such lessee or Copiholder, cannot (say they) preferre an indictment in their owne name, upon the statute, 8. H. 6. for that they have no freehold.

And to that purpose I find some presidents of Indictments in this ^{Cromp. 147.} forme: *viz. In unum messuag. apud, &c. ad tunc existent. liberum tenement. M. D. armig. vi & armis, &c. Manusforti, & illicite super possessionem cujusdam I. L. tunc firmari præd. M. D. messuag. præd. intraverunt, & ipsum I. L. vi & armis, ac manusforti & illicite tunc inde expulerunt & ciecerunt & præf. M. D. inde injuste disseisiverunt &c. See postea titul. Presidents.*

Also by this opinion, if a lessee for yeares, tenant at will, or a Copiholder, be forcibly put out by their lessor or lord, such lessee, or Copiholder, hath no remedy at all by indictment upon this statute, for they have no freehold, and therefore can have no restitution upon this statute.

Also by this opinion, if the lessee for yeares be put out by his lessor, and after the lessee puteth out the lessor againe forcibly, the lessee shall ^{Cromp. 72.} not be indicted; neither shall the lessor have restitution upon this stat. for that the lessor is not ousted nor disseised of his freehold: for the pos-

possession of the lessee is such a seisin of the lessor of his freehold, that he may have an assise if his lessee be put out.

And so of a copiholder, not having forfeited his estate, if his Lord notwithstanding shall enter upon him, and put him out, and the Copyholder shall re-enter upon his Lord with force, the copiholder shall not be indicted, nor yet the Lord restored, *Causa qua supra.*

And so by this last opinion, the very mischief specified and intended to be helped by these statutes, should seeme still to remaine in all cases betweene such lessees and copiholders, and their lessors or Lords, so as there can be no enquire, nor restitution in cases of forcible entrie or detainer betweene them.

Crompt. 71.

But howsoever the law bee taken for the indictment or restitution thereupon, yet in case that lessee for yeares, tenant at will, or a copiholder, be forcibly put out, or held out, either by a stranger, or by their lessor or Lord, the Justices of P. or any one of them, by the stat. 15. R. 2. ca. 2. might safely remove the force, upon view thereof, and commit the offenders to prison, and then the lessee for yeares, or copiholder, might presently re-enter, if peaceably they could so doe, and so might have his possession againe, without any restitution made him by the Justices.

But now by the statute made *Anno 21. Iacobi Regis, cap. 15.* it is enacted, that such Justices or Justice of peace, as by reason of any Act of Parliament now in force, are authorized upon enquiry to give restitution of possession unto tenants of any estate of freehold, of their lands or tenements, which shall be entred upon with force, or from them withholden by force, shall now have the like and same authoritie (upon indictment of such forcible entries, or forcible withholdings before them duely found) to give like restitution of possession unto tenants for terme of yeares, tenants by copy of Court Roll, guardians by Knights service, tenants by *Elegit*, Statute-Merchant, and Staple, of lands or tenements by them so holden, which shall be entred upon by force, or holden from them by force.

Now to shew something more, what the law accounteth to be force, and what weapons be offensive in these, and the like cases,

Col. 162.

Master Bracton saith, *Omnes illos dicimus armatos, qui habent cum qua nocere possunt*; which have any thing about them, wherewithall they may strike or hurt.

And therefore to have harnais, guns, bowes & arrowes, crosbowes, halberts, javelins, bills, clubs, pikes, pitchforkes, or swords not usually borne by the parties, shall be said to be *vis armata.*

Againe, *Si quis venerit cum armis, & deiecerit, vis tamen armata dicitur, sufficit enim terror armorum.*

Col. 162.

Si quis venerit sine armis, & in ipsa concertatione, ligna sumpserit, fustes aut lapides, vis dicitur armata.

And so to use casting of stones, hot coales, scalding water, or lead, or any other thing wherewith one may hurt the person of another, shall be said to be *vis armata.*

Lawfull

Lawfull Force.

CHAP. 78.

WHere a force, or forcible defence is justifiable, and where not. Force being opposed against the law, is utterly forbidden; but ^{P.R. 41.} being used in the maintenance of the law, and with the warrant of law, it is allowed, for that it maintaineth the peace of the Realme: And therefore force may lawfully be used by all the Kings officers, ministers and subjects thereunto deputed for the execution, or advancement of Justice, or of the Judgements of the law.

And so first it is a lawfull force, whereby all offenders in treason, felony, and other great crimes, be pursued, apprehended, carried to prison, and receive there condigne punishments.

It is a lawfull force, whereby the Sherife and his officers doe apprehend any person by vertue of the Kings Writ.

It is a lawfull force, whereby Justices of peace doe remove unlawfull entries, or holdings of possessions, and repress riotters, and doe arrest and send to prison such offenders.

And in these, and the like cases, the Kings officers (*sc.* the Sherife, Ju. ^{1.R. 7.} of P. and Constable) may take the helpe of others (what number they shall thinke meete) to assist them, when need shall require. See hereof *posse in vit. Posse Comitatus.* ^{Br. Riott.}

Also it is a lawfull force, which Justices of P. sherifes, coroners and constables shall use in apprehending, or committing to prison such as within their severall jurisdictions, and in their presence, shall in any sort breake, or attempt to disturbe or breake the peace, and they may therein take the assistance of others as aforesaid.

Also in these cases following, it is lawfull for the Kings officers, by ^{P.R. 41.} force to breake open a mans house, to arrest offenders being therein, if the doores shall be all shut, so as the officer cannot otherwise enter the house, *viz.*

1 For the apprehending of any person for treason, felony, or suspicion of felony. *13. E. 4. 9. Br. Coron. 159.* ^{Co. 5. 21.}

2 Where one hath dangerously wounded another and then flying into an house, the Constable or other officer, upon fresh suit, may breake open the doore, and apprehend the offender.

So may any other person besides the officer, as it seemeth, *7. E. 3. 19. Cromp. 171.*

3 Where there shall be an affray made in a house, and the doores shut, the constable, &c. may breake into the house to see the peace kept.

4 So upon a forcible entry, or detainer found by inquisition, before Justices of peace or viewed by the Just. themselves, See here *cap. 22.*

5 Upon a *Capias Vlagatum*, in any personall action, as also upon a *Capias pro fine*, directed to the sherife, the sherife may breake open the doores, &c. *27. Aff. 35.*

6 Vpon a warrant or processe, for the apprehending of any Popish recusant being excommunicate, the officer may breake open the house, *Stat. 3. Jac. 4. P. Rec. 52.*

7 Vpon a warrant for the P. or good behaviour, the Constables may breake

breake open the house, by the opinions of *Popham* and *Clerke*, Justices of Assise at Cambridge Assises, 3. *lac. Reg.*

8 Lastly in all cases where the King is party, or hath interest in the business, the Officers may breake open the doores as aforesaid: For no mans house shall be a castle against the King. *Co. 5. 91.*

Co. 5. 91. 12. 24. 9. And yet the Sherife nor his officers may not breake open any mans house, to execute the Kings Proesse (upon the body or goods of any person) at the suit of any subject. *Co. 5. 92. 95.*

But when a house is recovered by any reall action, or by *Ejectione firme*, there the Sherife may breake the house, and deliver seisin or possession to the demandant or plaintife, &c. For after judgement, it is no more (in the right or judgement of law) the house of the tenant or defendant. *Co. 5. 91.*

Co. 5. 91. But note, that the officer before he breake open the house or doores of any person, he must first signifie the cause of his comming, and desire that the doores may be opened unto him.

Co. 5. 91. & 11. 21. 11. 21. 7. 19. Note also, although no man may forcibly keepe his house against the Kings officers in the cases aforesaid, yet every mans house is (to himselfe, his family, and his goods) as his Castle, as well for his defence against injury and violence, as also for his repose and rest. And therefore the law doth give to dwelling houses divers privileges.

*Forcible
defence
lawfull.*

1 First, that it is a mans Castle for his defence as aforesaid. See *plus infra.*

2 Also a mans house hath the privilege to protect him against any arrest by force of any proesse at the suit of any subject as aforesaid.

Co. 11. 8. 3 A mans house (in some cases) hath a privilege against the Kings prerogative, for it hath beene adjudged that salt-peeter-men cannot dig in the mansion house of any subject, without his assent, in regard of the danger that may happen thereby in the night time, to the owner, his family, and goods, by thieves and other malefactors, *Co. 11. 82.*

Co. 5. 91. & 11. 12. 4 If thieves shall come to a mans house to rob, or murder him, hee may lawfully assemble company to defend his house by force, and if he or any of his company shall kill any of them in defence of himselfe, his family, his goods, or house, this is no felony, neither shall they forfeit any thing therefore.

Cromwell. 5 Also a man that is in posses. of a house peaceably, and doubteth that another (who indeed hath more right to the posses. and who may enter) will enter upon him, here he which is in poss. may defend and keepe his poss. of the house with his ordinary company, and may justifie to beat the other which shall attempt to enter upon him: But if hee kill him, it is felony: nay he in poss. (in this former case) may not hire any strangers to aid him, neither may he have his owne ordinary company in armor, nor otherwise be provided with bowes or guns to shoot at the other, as it seemeth. *Crompt. 70. a. See postea tit. Homicide. cap. 98.*

21. H. 7. 19. 21. H. 7. 19. 21. Co. 11. 82. 21. 91. Also if a man beeing in his house, doe heare that another will come thither to beat him, he may lawfully assemble his neighbors & friends &c. to assist and aid him there in the defence of his person. *In defence of his person.*

And yet if he, or any of his company, shall kill the other (or any of the

the other company) in such defence of himselfe, or his, this seemeth to be felony in all of them which be in the house, and in that action; so as they shall forfeit their goods thereby. See hereof *possestis. Homicide.*

But if a man be threatned, that if he come to such a place, that then he shall be beaten, in this case he may not assemble any company to goe thither to safegard his person; for there is no necessity of his going thither: besides he may have surety of the peace against such as threatned him. 21. H. 7. 30.
Co. 11. 5.
& 1. 91.

And if another shall make any assault upon mee, yet if I may escape with my life, it is not lawfull for me by the law to beat the other who made the assault, *per Markham. Quod tota curia concessit. 2. Hen. 4. fol. 7. Fitz. Bar. 72. Vide hic antea tit. Surety for the peace, cap. 72.*

*In defence
of others.*

If there bee an attempt made to beat a man, his wife, father, mother, or any of his children (within age) hee may lawfully use force to resist it, and may justifie the beating of the other in such case. 9. E. 4. 21.
16. E. 4. 17.

Also the servant may justifie to beat another in defence of his master. *Br. Trin's 217. hic cap. 72.* 21. H. 7.
39. 2.

But yet by the opinion of *Eliot. 12. H. 8 fol. 2. b.* it is not lawfull forcibly to touch the person of a man, except that there be so great perill that another is like to perish if he have not helpe. And there I may beat one man (saith he) to save the life of another: so that where the life of another is in danger, there any man (though a stranger) may lawfully resist it, and that with force and beating of the other, *vide hic. cap. 72.*

*In defence
of my goods*

Also a man may justifie to beate another in defence of the possession of his goods. And if another hath taken away my goods, I may take them againe from him with force. But a man cannot justifie the wounding of another in defence of his goods; and this was the opinion of *Wray* chiefe Justice, *An 25. El.* Cro. 45. 49.
Cro. 72.

Also if there be an attempt made to disseise me of my land, or to disturb me of my high-way, or to turne an ancient water-course from my mill, I may lawfully use force to resist it. *Vid. tit. Surety for the Peace. Cap. 72.*

A Keeper doth enter and chase upon my land, pretending this to be within his purliew, where it is not, If I command my servants to beat him off my ground, this seemeth Justifiable in the defence of my possession, against such unlawfull claime. *Tamen quere.* Dyer 327.
Cromp. 61.

where forcible detainer of possession is lawfull. CHAP. 79.

THe statute of 8. H. 6. concludeth thus, Provided that such as keepe their possession by force, after that they, or their ancestors, or they whose estate they have in such lands, &c. have continued their possession in the same three yeares, or more, shall not be indammaged by force of that statute. 8. H. 6. c. 9.
21. E. 11.
F. Force 4.

And by force of this statute and proviso, every heire, and every feoffee, may justifie to keepe their houses and possessions by force, in case that themselves, or their ancestors, or their feoffors, or they whose estate they have, have bene in peaceable possession thereof by the space of three yeares, or more. *Cro. 187.*

Yet this proviso must (as it seemeth) be thus construed, *sc.* that where a man is seised (of a lawfull estate or poss.) of an house, or lands, and he 22. H. 6. 4.
12. b.
Br. Force 4.
or 22. & 39.

or his ancellors, or they whole estate he hath therein, have continued the poss. of the same peaceably by the space of 3 whole yeares together without interruption, (& his estate not ended) there hee may hold and keepe such poss. with force, against all others : yea it seemeth if he shall hire strangers to aid him, to keepe such possession, or shall have his company in armor, he is not punishable by these statutes : but hee may not resist the Justices of peace that shall come to view this.

And if he shall be indited for such his forcible holding (after three yeares such quiet possession) he may pleade such his lawfull and peaceable possession by the space of 3 yeares next before such indictment, and thereby he shall avoid both the imprisonment and fine, and also shall debar the other party of his restitution. Neither may the Justices of P. remove him from his possession, though it bee found by the Inquisition taken before them that he held that house or land by force, after three yeares lawfull and peaceable possession, as aforesaid.

But here it seemeth that these foure diversities are to be observed :

First, where the party in possession did enter peaceably, and where forcibly : for if a man enter forcibly, and after continueth his possession peaceably by the space of three yeares without interruption, yet (it seemeth) he shall not be aided by these statutes.

Secondly, where the party in possession hath continued his three yeares possession peaceably, and where by force.

For if after a lawfull and peaceable entry, a man shall continue or hold his possession by force, this is a forcible holding or detainer, and punishable by the stat. of 8. H. 6. And three yeares of such possession shall not aid him, as it seemeth.

Thirdly, where the party in possession, is in by right, and of a lawfull estate, and where by wrong. And therefore if a disseisor (or other person that commeth in by a wrongfull and unlawfull title) hath continued such his possession peaceably by the space of three yeares, without interruption, it seemeth he shall not be aided by either of these statutes of 8. H. 6. or 31. El.

For if a disseisor hath continued his possession forcibly by the space of 20 yeares together, yet he may be indited upon the statute of 8. H. 6. before a Justice of peace, of the forcible detaining of the same, and the same being found, the said Just. of peace is to reseise the same, and to award restitution to the party disseised, or so put out.

Fourthly, where the party hath continued such his possession three yeares without interruption, and where his posses. hath beene interrupted or discontinued.

For if a man hath bin in peaceable possession of land, &c. by the space of three yeares, and above, by a good title, and then is disseised and expelled by force, and the disseisee re-entreteth peaceably ; or the disseisor is therefore indicted upon the statute of 8. H. 6. and the disseisee is thereupon restored, and is in possession accordingly ; yet in these cases the disseisee cannot justifie the detainer of the possession of those lands by force, because his possession was once interrupted : but after, (such interruption and re-entry, or restitution) if he shall continue a peaceable posses.

possel. againe for three yeares together, then it seemeth he may justifie the detainer of the possession thereof by force, by vertue of the proviso in the stat. of 8. H. 6.

If a disseisor hath continued his possession peaceably 3 yeares, and after the disseisee doth re-enter, or doth make his claime so neere as hee dareth, and then the disseisor re-enters againe, or continueth his possession (after such claime) here the disseisor cannot justifie to hold the same with force, for by the re-entry or claime of the disseisee, the first disseisin and possession of the disseisor was determined, and the disseisor is in of a new disseisin.

Also if he that hath beene a lawfull possessor of lands by the space of twenty yeares together, be once cleerely and wholly removed from the possession of the same land, hee cannot come with force, or multitude, to put himselfe in possession thereof againe, and to detaine the same with force, because his possession was once interrupted: and if he be indicted (upon the statute of 8. H. 6.) for such forcible entry, he shall not be relieved (touching the restitution) by the stat. 31. El. for that he had not the occupation of the said lands, nor had beene in quiet possession thereof by the space of 3 yeares together, next before the day of such indictment found.

How many severall remedies the partie hath, which forcibly and actually is either put out, or kept out of the possession of his houses or lands, &c. contrary to these statutes. CHAP. 80.

1 Action upon the statute of 8. H. 6.

First, the party so greived (having an estate for life, in taile, or fee) may have his assise, or action of trespassse of forcible entry upon the stat of 8. H. 6. against such disseisor: and therein if the defendant bee attainted of force, he shall fine to the King, & also answer to the plaintife his treble dammages, and treble costs of suit, and also the plaintife shall thereupon have a Writ of Restitution to restore him to his former estate. Co. L. 257.

But (this action being the suit of the party, and onely for the right) this remedy (by action) is onely where the entrie of the defendant was not lawfull: for if a man entreth with force, where his entry is lawfull; as if the disseisee shall enter upon the disseisor with force, he shall not be punished by way of action: but yet he may be indicted upon the stat. and upon such indictment found, the party put out (sc. the disseisor) shall be restored; for the indictment is for the force, and for the King. And here the offender, sc. the disseisee, shall make fine to the king, although his right be never so good. Br. forc. 11. 15. H. 7. 17.

2 Writ upon the statute of Northampton.

2 Also the party so greived, if hee will lose the benefit of his treble dammages and costs, he may be ayded, and have the assistance of the Justices of peace, and that after divers sorts: First, he may purchase a writ out of the Chancery (directed to the sherife onely, or to the sherife and Justices of peace, and to every of them) for to remove the force; & this is upon the statute of Northampton, 2. E. 3. cap. 3. the forme of which writ you may see F. N. B. 249. f.

But

But upon this writ the Justice of peace is to proceed onely as a minister, and is to certifie his doings herein : and that Justice of peace to whom the writ shall be delivered, ought for to execute it, *sc.* he may remove the force ; but here he may not put the party in possession againe, who was put out.

For the manner of the Justices proceedings herein, see in the other title of *Forcible Entry* before *cap. 22*

3 Also the party grieved, may at the generall Sessions of the peace within the same county, preferre his bill of indictment, upon the statute of 8. H. 6. for such forcible entry, or detainer ; which being found there, the complainant shall be restored to his possession by a Writ of restitution, granted out of the same Court to the Sherife. *indictment in Sessions.*

4 Also the party so grieved, for a more speedy remedy, may com-
plaine to any one or more Justices of peace of the same county, of the
said force ; and thereupon the said Justice of peace may, *ex officio*, and
without any writ, either doe execution of the statute of Northampton,
as aforesaid : or else the said Justice of peace upon such complaint, must
goe to the place where such force is, to see it, and to remove the force,
and to arrest and commit the offenders, and shall also keepe a speciall
Sessions to inquire of the said force : and if upon such inquiry such force
shall be found, then the said Justice shall restore the party grieved to his
possession againe ; and here no other Justice of peace can grant a *Super-
jedens* to stay the same restitution. *4 By the
Nest. out of
Sessions.
Remedium
plus Resti-
tutum.*

See more hereof before in the other title of *Forcible Entry*.

Also the party grieved may remove such indictment, found either at such
generall or speciall Sessions, by a *Certiorari* into the K. Bench, and the
Judges of that Court may award a writ of restitution, to the Sherife of the
county, to restore possession to the party. See here *cap. 22*.

Now when the Just. of P. shall make such inquiry, he shall direct his
precept or warrant to the sherife, commanding him to cause to come
before the said Just. of P. at some good towne there neere, 24. sufficient
and indifferent persons dwelling neere to the said lands or tenements
(whereof every one shall have in freehold lands, or tenements 40. s. by
the yeare at the least) to inquire upon their oaths of such force, &c. See
before in the other title of *Forcible Entry*. *Enquiry.*

Vpon default of apparance of those Jurors, the Just. of P. may award
an *Alias*, & after that *Pluries infinite*, till they come ; but so that at the day
of the second precept, or writ, the sherif must return 40. s. in issues, upon
every one of them, & at the 3 writ 5. li. & at every day after the double.

And although any of such Jurors shall not have 40. s. freehold land
per annum, yet their presentment of such force, is good for the King,
soa. the offenders shall fine therefore to the King : but whether the
party shall have restitution upon such a presentment, it beeing pleaded
or shewed at the time of the restitution to be made, seemeth a doubt.
See here, *cap. 84*.

If the sherife shall returne smaller issues upon the Enquirors than the
statute doth appoint, yet the party indicted shall not impeach the enquire
therefore.

Neither is it cause to impeach the enquire, though the Justice of P. doe not goe to see the place where the the force is. *Marrow.*

And it is convenient, upon such enquire, that the evidence be given openly to the Jury, to the intent it may appeare to the Justice of peace or court, whether there shall be reasonable cause to stay restitution, or no, after the indictment found. See *Dyer. 122.*

Of restitution to be made to the party put out. CHAP. 81.

Restitution.

I Will here shortly recite the words of the statute, which for this but-^{8.H.6.c.9.} fineffe of restitution will give the better light.

And if upon such inquiry, it be found before the said Just. that any have done contrary to this stat. (*viz.* have entred, or held with force) the said Justice of peace, &c. shall reseise the said lands or tenements so entred upon, or holden, and put the party so put out, in full possession the same lands and tenements so entred or holden, as before.

Here we see that after such forcible entry, or holding, so found by en-^{P.R. 35.} quiry, the said Justice of peace, &c. shall reseise the said lands or tenements, and shall remove the force (*sc.* all such offenders as shall bee found in the house, or upon the lands, that either entred or held with force) and upon the prayer of the party so put out, the said Justice of peace shall restore him to his possession againe.

And herein the Justice of peace needeth not to stay, or stand upon the right and title of either of the parties. See hereof a little after.

But no restitution shall be made, but where the forcible entrie, or detainer is first found by inquisition. *Br. forc. 27.*

Indictment, the forme.

Concerning this Inquisition or indictment, the Justices of peace shall ^{Crom. 166.} doe well to peruse and regard the same, to see if it bee sufficient; for the Justices of peace ought not to award restitution, where the indictment shall appeare to them to bee any way insufficient in the Law, either in matter or forme.

1 First therefore to have restitution, the putting out (by expresse ^{Lamb. 195. 257.} words) must be in the Indictment, and found by the inquisition: for another man may enter upon me, and yet not put me out, and then there needeth no restitution to be made by the Justices.

And this putting out, is to be understood onely of house or land, and not of a rent, common, advowson, and such like, into which an actuall entry cannot be made: and therefore none shall have restitution but such onely as are put out of house or land. See *antea sub hoc tit.*

2 Also the indictment ought to expresse the quality of the thing entred upon &c. *sc.* whether it be a messuage, cottage, meadow, pasture, wood, or land earable: for if the indictment be, *quod manu forti intraverunt in tenementum.* &c. it is void for the incertainty, because the word *tenementum* may extend to either of them. ^{Lamb. 481. B. Forc. 25.}

3 Also the indictment must have these words, *sc. ad huc extra tenent;* ^{14.H.6.16. Br. Forc. 25.} otherwise the partie shall have no restitution; and yet these words be not in the stat. but without these words in the indictment, it may be supposed & thought that he which put me out, hath left the possession againe, or that I have gotten it againe; and then the restitution is needlesse.

So

So as in every such indictment, these words are materiall, *sc. expulerunt, & adhuc extratinent*; and for lacke of either of these words, no restitution shall be made or awarded.

4 Also one of these two words *Manuforti*, or *cum multitudine*, seeme to be materiall in the indictment; unlesse they bee implied by reciting the statute of 8. Hen. 6. and concluding *contra form' stat. predicti*. or by some other words in the indictment. See the Presidents herein.

For the forme to be used in these Indictments, see more *postea tit. Indictments*.

5 If a man shall bee restored upon an insufficient indictment taken before the Justice of peace, and this be removed into the Kings Bench, the Court there will cause the party to be restored that before was put out by the Justice of peace.

6 Also if error or insufficiency bee in the indictment, taken before Justices of P. & yet a precept or writ of restitution is awarded by them, any two of those Justices of peace which were present at the taking of the said indictment, upon the prayer of the party, may (at another Sessions, or out of the Sessions) grant and award a *Superfedeas* to the sherife to stay the same restitution, if the sherife had not made restitution before the *Superfedeas* came to his hands.

7 But no other Justice of peace (besides those which were present at the taking & finding of the said indictment) can grant a *Superfedeas* if the indictment were found at a special Sessions; And if it were found at the quarter Sessions, yet the *Superfedeas* shall be granted under the Teste of one of those Justices only which were present at the finding of the force. *ibidem*.

8 A man is indicted that he entred with force, and held with force, and upon the traverse, it is found that he entred with force, but not that hee held with force, yet this indictment seemeth good enough, and the partie shall be restored.

9 So two are indicted of a forcible entry and detainer, and upon the traverse, it is found that the one entred with force, and the other held or detained with force, yet the party shall be restored. *Br. Forc. 15.*

10 If it be found by one Enquest that *A.* put me out by force, and by another Enquest, that I did put out *A.* by force, either of us may pray to have restitution against the other: but he that is first restored is in the worst case; for the other may have restitution afterwards, and then hee that had restitution first is without remedy, by the hands of the Justice of peace; saving that he may re-enter, if he can, peaceably, or have his action.

11 If it be found by one Enquest, that *A.* put me out by force, and by another Enquest taken at the same Sessions, that *B.* did put mee out by force, I may chuse upon whether of these indictments I will bee restored: and if I have restitution against *A.* and this be returned, I cannot have restitution upon the other. But if (upon the writ of restitution) it be not returned that I have restitution, then I may afterward have restitution against *B.* upon the other verdict, if *B.* hath re-entered upon the first restitution made to me. *Marrow.*

12 *A.* is disseised, or put out with force by *B.* and after *B.* is put out with force by *C.* and all this is found by one and the same inquisition; here *B.* may

Several
Indict-
ments.

B. may have restitution against *C.* (for *B.* hath more right to the possession than *C.*) and then may *A.* have restitution against *B.* But upon this inquisition if *A.* have restitution first, then *B.* shall not have any restitution: otherwise if these had beene found by severall inquisitions.

who shall award and make this Restitution. CHAP. 82.

After the force is found by the Enquest, the Just. of P. (before whom the said force shall be so found) may himselfe put the party in possession againe: Or he may make his precept (under his owne *teste* alone) to the sherife to doe it. *Dyer* 187.

The forme of the Precept to the sherife to make restitution See *postea* *Presidents*, cap. 129.

But no other Justice of peace hath any authority (by the statutes) to grant or award Restitution, but only he or they, before whom the force was found by inquisition. Nay the Just. of *Oyer* and *Terminer*, nor the Just. of Gaole-delivery cannot grant restitution, nor the Just. of peace at their generall Sessions of the peace, cannot grant this restitution, except the indictment were found before them. And yet by some opinions, if it shall happen that the Justice of peace, before whom such and indictment shall bee found, before restitution made shall happen to die or to be removed, then may the residue of the Justices of peace at their generall Sessions of the P. grant a writ of Restitution.

Also the Just. of the Kings Bench (in regard of their supream authority in all cases of the Crowne) either upon Certificate, or delivery (to them made by the Just. of P. before whom such force was found) of the presentment of such force; or if the sayd presentment, or indictment shall be removed before them by *Certiorari*, in both these cases the Justices of the Kings Bench may award restitution. See *antea*, in the other title of *Forcible Entry*. *Fitz. Entre*. 36. & *Cro*. 159.

But neither the Just. of the K. Bench. nor any other (besides him or them that made the inquiry) can personally restore the party, but only by way of precept to the Sherife.

The Sherife (if need be) may take the power of the County, to execute the precept of the Justice of peace herein.

And if the Sherife upon such a Precept, or upon a writ of Restitution (from the Sessions, &c.) shall returne that he cannot make restitution, for resistance, &c. he shall be a merced for making such a returne, because in such case hee might have taken the power of the County to assist him therein. See the like case *Fitz. Execution* 147.

Note that the same Justices or Justice of peace, before whom the force was found by Inquisition, and which have granted his or their warrant to the Sherife to make restitution, may afterwards grant his or their *Superfedeas* to the Sherife, to stay the same restitution: But no other Justice or Justices of peace, hath or have authority to grant any *Superfedeas* in such case, &c. See *Dyer* 123. & 187. *hic* cap. 81.

To whom Restitution shall be made. CHAP. 83.

THis restitution ought to be made to him that was put out, and to none other; for so are the words of the statute.

Therefore if the father be put out by force, and dieth, his heire shall not have restitution: yet here the Justices may imprison, and fine the offenders, for by such forcible entry they have broken the peace. See *antea* in the other title of *Forcible Entry*.

Also, if after the death of the father, a stranger abateth, or entreth into his land by force, before the heire hath gotten actuall possession in deed, the heire shall not have restitution, because he had but a possession in law descended upon him.

The disseisee doth put the disseisor out with force, the disseisor shall be restored; for the right or title is not commonly disputable, or material; but by the words of the statute, he that is in such sort, (*i.e.* forcibly) put out, shall be restored.

Yet it seemeth in this case that upon traverse tendred by the disseisee, and his right appearing, the Just. of peace may stay restitution. See hereof *posseß sub hoc tit.*

Also if the disseisor be restored againe, yet the disseisee may after re-enter peaceably, or have his assise. *Fitz. Entre* 20.

But if the disseisee shall enter peaceably upon the disseisor, and so they both shall abide and continue there together for divers dayes, and after the disseisee doth put out the disseisor with force, and is thereof indicted, here it seemeth the disseisor shall not be restored; for the disseisors possession was avoyded in quiet manner at the first entry of the disseisee, and so the disseisor had no possession, in the eye of law, when hee was put out.

If the disseisee shall enter peaceably, the disseisor and his family being abroad, and after the disseisee shall keepe his possession with force, the disseisor shall not be restored, by reason of the eigne title of the disseisee, and for that he entered peaceably. See *antea* in the other title of *Forcible Entry*.

But here the disseisee shall be imprisoned and fined, for keeping his possession with force; for forcible keeping or detaining, is as well prohibited as forcible entry.

And here not, that the being of a mans wife, children, or servants, in the house, or upon the land, doe preserve his possession; but his cartell being upon the ground, &c. doe not preserve his possession.

Also when two are in possession of an house, &c. and the one claimeth by one title, and the other by another title, here the law shall adjudge him to be in possession, who hath the best right to the possession: so that if *A.* shall wrongfully enter upon *B.* and they both shall continue in the house, and after *B.* shall put out *A.* with force; *A.* shall not be restored, for *A.* never gained any possession by his entry.

Two Joyntenants, or Tenants in Common, and one of them doth forcibly put out the other out of his possession, hee that is so expelled, may have an action of Trespasse of forcible entry against his companion,

nion upon the statute 8. Hen. 6. and thereupon hee shall have a Writ of Restitution to restore him to his former estate: but what the Justice of peace can doe herein, *quare*. for that his entry and possession is lawfull through the whole land, in respect of his owne moity and estate. See 8. E. 4. fol. 8.

Two Ioyntenants be put out by force, and one of them only sueth to have restitution, restitution shall be made unto him.

Whether a copholder, lessee for yeares, or tenant at will, shall have restitution; see before, cap. 77.

If Lessee for yeares be put out of his Terme by force, & die, though after his death this force be found by Inquisition, taken by a Justice of P. yet his Executors shall not bee restored to that land (by the Justice) for that they are not the same person that was put out.

what causes there may be for staying the Justice of peace from granting Restitution. CHAP. 84.

ALthough the party thus to be indited for a force, shall not be heard nor suffered to give his title in evidence, to excuse himselfe of his forcible entry, or detainer, to save his fine due to the K. for such force (which fine he shall make though his right bee never so good); yet to the restitution (which the Complainant shall demand, if the force be found) the defendant shall be heard to disprove the title of the complainant, or what he can say otherwise for the stay of restitution, *Quare*, and see before in the other title of *Forcible Entry*.

Now the defendant (or party indited) for the stay of restitution, may, at the time of the restitution to be made, pleade or alledge any of these things following:

- 1 His quiet possession by three yeares together.
- 2 He may deliver to the Justice of peace, or Court, a *Certiorari*, and this is a *Superfedeas* to them. See the statute 21. Jac. cap. 8. *hic possea*.
- 3 Hee may tender his traverse: but M. Lambert seemeth to doubt whether the party may be admitted to his Traverse before the same Justice of peace. And he thinketh it safer for the Justice to make Restitution, notwithstanding the offer of Travers. or rather he wisheth the Justice to deliver, or certifie the Presentment into the Kings Bench, and so to refer the further proceeding to them &c. See *hic possea*.
- 4 He may pleade the insufficiency of the indictment See *paulo antea*, cap. 81.
- 5 Hee may pleade the insufficiencie of any of the Jurors, *sc.* for not having fortie shillings freehold land *per annum*: and in this case Mast. Marrow is of opinion, that the party shall have no restitution: Yet M. Lam. and M. Crompton seeme to be of the contrary opinion. Lamb. 155. Crompt. 165. *Idco quare*.

And it seemeth (by the opinion of M. Lambert) that the Justice of peace ought not to stay restitution, save onely, either by alledging three yeares quiet possession, or by removing the record and presentment into the Kings Bench by a *Certiorari*. Lamb. 156.

For the first, there shall be no restitution awarded (upon any indictment of forcible entry, or holding with force) where the party indited hath beene in quiet possession by the space of three whole yeares together, next before the day of such indictment found, if his estate bee not ended,

ended; and this the party indicted may alledge to stay the restitution, and the restitution upon this shall be stayed by the Justice of P. untill it bee tried, if the other party will deny or traverse the same. And if the same allegation be tried and found against the party indicted, then shall hee pay such costs and damages to the other party, as shall bee assessed by the Justices before whom the same shall be tried; the said costs and damages to bee recovered and levied notwithstanding by the course of the common law. 31. Eliz. cap. 11.

Also if a man who hath made a forcible entry or detainer be in doubt *Certiorari*. that he shall be indicted thereof before the Justice of P. (upon the stat. of 8. H. 6) and that thereupon restitution will be awarded against him, he may have a writ of *Certiorari* out of the K. Bench ready, and when the bill of indictment is found, he may presently deliver it to the Justice of peace or Court; And this is a *Superfedeas* to them for to stay the restitution; for that upon this Writ, the said inditement shall be removed from them into the Kings Bench.

And although the inditement be found after the *teste* of the *Certiorari*, it is not materiall, for they be both the kings courts, &c.

But if a *Certiorari* commeth to the Justices to remove an indictment of forcible entrie taken before the Just. of P. in the country, and the party will not sue to remove it, but suffereth it to lye still, the Justice of P. may proceed to grant restitution, notwithstanding the writ, as *Hobert* the K. Attorney said in 6. H. 7. But *Keble* held opinion against him; and it seemeth rather, that the Just. of peace ought *ex officio*, to send the indictment away, because they are commanded so by the writ; and this writ is a *Superfedeas* of it selfe to the Justices of P. to stay their proceedings; and if they shall proceed after, it is erroneous. *Br. Judges. 17.*

After restitution made by the Just. of P. if the other party doth remove the indictment by a *Certiorari* of a more eigne date than is the indictment, the Ju. of the K. Bench may award restitution backe againe: for upon the matter the Just. of peace had no power to make restitution, for that the *Certiorari* hath relation from the date thereof.

After Restitution granted from the sessions, and delivered to the sherife, the other parte having a *Certi.* delivereth it also unto the sherife after the Sessions, the sherife shall not surcease thereupon (for he hath no authority to allow thereof.) But if the *Certiorari* were delivered to any Ju. of P. he may thereupon grant a *Superf.* to the sherife. And if restitution were made by the sherife before the said *Superfedeas*, came to his hands, then the other party shall have restitution backe againe, in the kings Bench upon the indictment removed thither.

But for that bills of indictment of forcible entry, or riots, beeing found before the Just. of P. are oftentimes removed by writs of *Certiorari* out of the Chancerie or kings Bench, by the meanes of the person indicted, by meanes whereof such offenders for the most part escape unprosecuted & unpunished; (for that the party grieved will not undergo the travell or charge, &c.) it is therefore enacted (by the stat. made 21. Jac. Regis. cap. 8.) that all such writs of *Certiorari* shall now be delivered at some Quarter Sessions of the peace, in open Court; and that the parties indicted, before the allowance of such

such *Certiorari*, shall become bound unto such person which shall prosecute such bill of Indictment against them, in the sum of 10. li. with such sufficient sureties, as the Just. of peace, at their said quarter Sessions of the P. shall thinke fit, with condition, to pay unto the said prosecutors of such bill of indictment (within one moneth after the convictiō of such parties indicted) such costs and damages, as the said Justice of peace in the said Sessions of the peace shall assesse or allow. And in default thereof it shall be lawfull for the said Justices to proceed to triall of such indictments, any such writ of *Certiorari*, to remove the same indictment, notwithstanding.

Traverse. The tender of a Traverse (to an indictment of Forcible entry, upon the stat. of 8. H. 6.) is no *Superfedeas* but in discretion; so as the Justices of peace, or Court (notwithstanding the Traverse tendred) may grant, or may stay the restitution at their discretion, according as the truth of the right or title shall appeare to them: and so is the use of the Kings Bench. *Dyer. 122. pl. 34.*

Or else the Just. of P. (before whom the indictment was found) may after Traverse tendred, certifie or deliver the indictment into the Kings Bench, or to the quarter Sessions, and so refer the further proceedings therein to them.

But if the party indicted shall tender a Traverse presently, whereupon Restitution is staid, and after he shall not pursue his Traverse with effect (but discontinueth it) and after doth tender another Traverse upon Restitution prayed at another time; the Justices of peace, or Court, shall doe well to proceed to grant restitution, notwithstanding such Traverse tendred.

And it is the course of the Kings Bench, that hee that tendreth the Traverse there (upon such an Indictment) shall beare all the charges of the triall, and not the K. nor he at whose suit the indictment was found: And the same reason seemeth upon an Indictment traversed before Justices of peace.

But upon a forcible entrie found, and a traverse tendred, if the Justices of peace will try the traverse, it seemeth they ought to cause a new Jury to be returned (by the sherife) before them, to trie the same Traverse; The which may bee done the next day, but not the same day. *Crompt. 150. 152. Vide hic. cap. 133.*

Ryots. CHAP. 85.

IT may easily and manifestly appeare to all such as have beene conversant in our Chronicles, how pernicious and dangerous to this kingdome, unlawfull assemblies have beene in all precedent ages, yea, such as at the first were very small, and began upon very small occasion, yet not being repressed in time, grew to such greatnesse & height, that they afterwards put in hazard the state and government of this Land: And therefore it is behovefull and good wisdom for all Justices of peace to indeavor by all good meanes to quench the beginnings & first sparks of such assemblies, as knowing, that for want of timely restraint, they may soone grow to the like danger againe.

Now

Now for the better suppressing of such unlawfull assemblies, and partly for the better inabling of the Justices of P. therein, there were three statutes devised and provided specially by the wisedome of the Realm, and are remaining yet in force, that is to say, the statute of 13.H.4.7.2.H.5.8. and 19 H.7.13.

The stat. of 13.H.4. authorising, nay upon a great penalty injoyning the Justices of peace (together with the sherife) to arrest, remove, and punish the offenders.

But for that the aforesaid stat. gave no remedy to the party grieved, if the Just. of P. or sherife should make default, as also for the better stirring up of the Justices in this businesse, the statute of 2.H.5. was made, authorising the L. Chancellour of England (at the instance of the partie grieved) to grant a Commission to inquire of the defaults of the two next Just. of P. and sherife, in not executing of the aforesaid statute of 13.H.4. And withall, providing how the charges of the Justices, spent about the suppressing, and inquiry of such riots, should bee borne; and also limitting what punishment as well the offenders attainted of such riots, as also all such as should not bee ready to assist and ayd the said Just, to repress such rioters, should suffer.

And lastly, for that the two former stat. did not expresse of what sufficiency the Jurors impanelled to inquire of riots, should be; nor what issues they should lose, if they appeared not; nor any certaine punishment was inflicted upon the maintainers or imbracers of such Jurors: Therefore the said stat. of 19.H.7. was made. But so much of these things as concerne the Justices of P. doe appeare more particularly here before: And therefore now I will proceed in this businesse.

First what shall bee said to be a Riot, Rout, or unlawfull Asseublie, within the meaning of these Statutes.

WHen three persons or more, shall come or asseemble themselves together, to the intent to doe any unlawfull act, with force or violence, against the person of another, his possessions, or goods, as to kill, beat, or otherwise to hurt, or to imprison a man; to pull downe a house, wall, pale, hedge, or ditch; wrongfully to enter upon or into another mans possession, house, or land &c. or to cut or take away corne, grasse, wood, or other goods wrongfully; or to hunt unlawfully in any Parke or Warren, or to doe any other unlawfull act (with force or violence) against the P. or to the manifest terror of the people; if they onely meet to such a purpose or intent, although they shall after depart of their own accord, without doing any thing, yet this is an unlawfull assembly.

If after their first meeting, they shall ride, goe, or move forward toward Rout, the execution of any such act (whether they put their intended purpose in execution, or not) this is a Rout.

And if they doe execute any such thing in deed, then it is a Riot.

And yet by the opinion of some, a rout is onely, where such a company (of three or more) are so assembled, for their owne common or proper quarrell (and not in the quarrell of any other person.) As where the inhabitants of a towne doe asseemble together to pull downe a house, wall, pale, ditch, or other inclosure, pretending to have title of Common,

or a way there; or to beat a man that hath done them some publique offence. But yet the word *Rout*, seemeth to have a more large and ample meaning, as appeareth by the Statute of 18. Ed. 3. Stat. 1. speaking of Routs ^{Br. 45. Lamb. 11.} that are brought in the presence of the Iustices: and the stat. of 7. R. 2. cap. 6. treating of riding in great Routs.

Master *Finch* describeth them shortly thus, *Fi. libro 2.*

An unlawfull assembly is when above the number of two shall assemble to doe any unlawfull act.

A Rout is when they set forward to doe it.

A Ryot is when they doe it indeed.

But at the Common Law (before the making of these statutes) these facts and unlawfull assemblies committed or done, were of none other qualities in their natures, than other common trespasses; although sometimes by the discretion of the Iustices, a greater fine was assessed in such cases, than was for other common trespasses.

Now in Ryots, Routs, and unlawfull assemblies, these foure circumstances are to be considered:

First the number of the persons assembled.

Secondly, the intent and purpose of their meeting.

Thirdly, the lawfulness or unlawfulness of the act.

Fourthly, the manner and circumstance of doing it.

The number For the number, there must necessarily bee three persons at the least, so gathered together, or else it can bee no ryot, rout, or unlawfull assembly, within the meaning of these statutes.

By the stat. 1. *Marie* 12. & 1. *Eliz.* 16. if above the number of two & under 12. assembled together, had gone about unlawfully to kill any subject, or to cast open any inclosure, destroy any Deere, Conies, Dove-house, or fish, to pull downe houses, burne stackes of corne, or abate Rents, or prices of corne or victuals, if they had not departed upon Proclamation, but should after attempt to doe any of those things, they were to bee imprisoned by the space of one yeare, without baile. P. 20.

By the same stat. of 1. *M.* 12. and 1. *El.* 16. if twelve persons, or mo, assembled together, should have intended, or gon about to change any lawes, or to have done any of the former things, if they had not departed within one houre after Proclamation, it had beene felony in them all. P. 16. 17.

And by the same stat. if the number had beene 40. or above that had assembled together, to the intent to have done any of the former things contrary to those statutes, or any other felonious or rebellious act, if they had continued together three houres after Proclamation, it had beene felony; but these two last statutes stand now discontinued. P. 21.

But an assembly of an hundred persons or mo (yea though they bee in armour) yet if it bee not in *terrorem populi*, and were assembled without any intent to breake the peace, it is not prohibited by any of these statutes, nor unlawfull. See *infra*.

The intent. For the intent: It seemeth it can bee no ryot, &c. except there bee an intent precedent, to doe some unlawfull act, and with violence or force. ^{Crompt. 4. P. R. 15.}

And therefore if divers be assembled, and none of them doe know to what end or purpose they are met, this can make no ryot or rout, till the intent be knowne. ^{Lamb. 11. Crompt. 4.}

If the master (intending to make a ryot) taketh with him his ordinarie servants, and maketh an affray, or other outrage with them, this is no ryot in the servants, except their master had made them privie to his intent before, but the master onely shall be punished for this. Yet *quære* whether this shall be adjudged, or punished in the Master as a ryot.

And in this former case it is not materiall, though the number of his servants that goe with him are above his degree, so long as they bee his household servants. *Lamb. 184. P.R. 25.*

If divers being lawfully assembled, shall quarrell, or fall out upon the sudden, without any former such intent, this is no ryot but a sudden affray.

If divers bee at an Ale-house, and without any intention of an affray, they suddenly fall together by the eares, this is no ryot, but a sudden affray, because they had no such intention before.

If a Iury being together, shall fall out, and fight, this is no ryot, because they were lawfully assembled.

Also where there bee three or more gathered together, either to execute the justice of the law, or for the exercise of valor, and triall of activitie, or for the increase of amitie or neighbourly friendship, (and not being met with an intent to breake or disturbe the peace, or to offer violence or hurt to the person of any) such assemblies bee not prohibited by any of these statutes, nor unlawfull; As if the sherife, undersherife, or bailife, shall take power (what number they shall thinke good) to execute the Kings processe, &c. it is lawfull. So of other officers. See more hereof *postea tit. Posse Comitatus.*

So it is a lawfull assemblie which is gathered together to runne at Tilt, &c. by the kings commandement.

So the assembly of people, and their use of harnesse upon Midsummer night in London, being onely for disport, is lawfull, and though it bee with a great assembly of people, and in armor, yet it being neither *interrorem populi*, nor to doe any act with force or violence against the Peace it is lawfull.

Also if divers doe assemble and gather together, to drinke at an Ale-house, or at a Christmas dinner, or at a match of shooting, or such lawfull disport; or else to play at Foot ball, Bucklers, Beare-baitings, Dancings, Bowles, Cards, or Dice, or such like unlawfull games or disports, this is neither Ryot, Rout, nor unlawfull assembly within these stat. nor here prohibited; for these meetings usually are not with any intent to offer or doe violence or hurt to the person, possessions, or goods of any other; neither are they *ma'umina* se, they are in themselves neither evill, nor unlawfull nor prohibited by the Common Law, though otherwise some of them are prohibited by statute, *Vide ante tit. Games unlawfull.*

But if any of the persons assembled together for any the disports above mentioned (or for the like,) came with any intent or purpose to breake or or disturbe the peace, or to offer violence or hurt to the person of any, and shall make an affray, or doe other outrage, this seemeth to bee a ryot, in so many as came with any such unlawfull intent or purpose.

And if any of the persons assembled together (to drinke, or play) at an Ale-house, or for any the disports above mentioned, or the like shall fall out suddenly (without any former intention of an Affray) and in

that their falling out they shall be take themselves to sundry parts, and shall make an affray, it seemeth (by the opinions of some) that this shall bee adjudged a Riot in so many of both sides, as shall bee parties to that affray or quarrell: but *quere* hereof, for that it was without any such intent before their said assemblie, and done onely upon the sudden, & upon a sudden occasion hapning after their said meeting; and againe, their said assembly was at the first lawfull, or at least not prohibited by any of these statutes, nor yet by the common law. *Co. 11. 87.*

But otherwise, if by agreement they shall meet againe, and fight afterwards, that maketh it a Ryot, as being a new assembly upon the former quarrell, and so their second meeting was upon an intent precedent to doe an unlawfull act.

Where a great number shall assemble themselves, or come into a house, and there detaine posses. of the house with force (though this bee neither a publike fact, or force, done in the open sight of the people; yet) this is a Riot, and the Iustices of peace punishable if they shall not remoue such force, and suppress such Riots. See the case of *Drayton Bassett, hic antea iiii. Forcible Entry.*

Concerning the lawfulnessse or unlawfulnessse of the act. CHAP. 86.

*Lawfulness
of the act.*

NOte, that the lawfulnessse, or unlawfulnessse of the thing done or intended, doth not alwaies excuse or accuse the parties to a Riot, &c. but so, that the manner and circumstances of the act, must also bee considered.

For every man may assemble company to ayde him in his house, against injury or violence: but if a man bee threatned, that if hee come to such a place hee shall bee beaten, in this case if hee shall assemble any company to goe thither with him (though it be to safegard his person) it seemeth to be within the compasse of these statutes, & unlawfull. *Br. Ryots 1.*

Every man in peaceable manner, may assemble a meet company (and may come) to doe any lawfull thing; or to remove or cast downe any common nusans done to them. *Comp. 64.*

Every private man, to whose house or land any nusans shall bee erected, made, or done, may in peaceable manner, assemble a meet company, with necessary tooles, and may remove, pull, or cast downe such nusans (and that before any prejudice received thereby) and for that purpose if need bee, may also enter into the other mans ground. *Br. Nusanz. 14. & 33.*

A man erects a Weare, crosse, a common River (where people have a common passage with their Boats) and divers did assemble with spades, crowes of yron, and other things necessary for to remove the said weare, and made a trench in his land that did erect the weare, to turne the water, so as they might the better take up the said Weare, and they did remove the same nusans, this was holden neither any forcible entry, nor yet any ryot. *16 Eliz. 1. Comp. 64.*

But in the cases aforesaid, if in removing any such nusans, &c. the persons so assembled shall use any threatning words (as to say they will doe it in spight of the other; or they will doe it, though they die for it, or such like words) or shall use any other behaviour, in apparent disturbance

bance of the peace, then it seemeth to bee a ryot: and therefore where there is cause to remove any such Nufans (or to doe any like act) it is the safest not to assemble any multitude of people, but onely to send one or two persons, or (if a greater number) yet no more than are needfull, and only with meet tooles, to remove, pull, or cast down the same, and that such persons tend their businesse onely without disturbance of the peace, or threatning speeches.

For the manner of doing a lawfull thing, may make it unlawfull.

Also the manner of doing an unlawfull act by an assembly of people, may be such (and so handled) as that it shall not be punished as a ryot.

As if I shall assemble a meet company to carrie away a peece of timber, or other thing (whereto I pretend a right) that cannot bee carried without a great number, if the number bee not more than are needfull for such purpose, although another man hath better right to the thing so carried away, and that this act bee a wrong, and unlawfull, yet is it of it selfe no ryot, except there be withall threatning words used, or other disturbance of the peace.

For the manner and circumstances. CHAP. 87.

AS there must necessarily be three persons at the least, assembled together, to make a ryot, &c. so their being together and their demeanour must bee such, as shall or may breed some apparent disturbance of the peace; either by threatning speeches, turbulent gesture, shew of armour, or actual force or violence, (to the terror & fearing of the peaceable sort of people, or to the emboldning & stirring up of such as are busie headed, and of evill disposition, by such fact;) or else it can bee no ryot, &c. For, as I said before, the manner of doing a lawfull thing, may make it unlawfull, & *e converso*.

And therefore if divers in one company, going to the Church, Faire, or Market, shall goe armed; or one going to the Sessions, or other like assembly, shall goe with his servants in harnesse (to the terror of the people) though hee or they have no intent to fight, or to commit any ryot, yet this is a Rout by the manner of his or their going, being needlesse, disordered, and against the Law. See the stat. 2. Ed. 3. cap. 3.

But in the former cases, if they had gone in privy coats of plate, shirts of maile, or the like, to the intent to defend themselves from some adversary; this seemeth not punishable within these statutes, for that there is nothing openly done *in terrorem populi*.

One N. W. together with fourscore persons, came with spades, mattocks, pistols, swords, and daggers, in the night, to a peece of ground (where Sir Thom. St. had made a great Weare crosse over the river of Trent, in the county of Nottingham, to the great Nufans of passengers there, &c.) and there they made one or two little trenches to let out the water, &c. And though it were lawfull to make the trenches, and to debruse the Nufans, yet for that they came with such number, & weapons, they were deeply fined in the Star. Chamber, 36. Eliz.

Also one Kewp Lord of a Copihold, did enter with twenty persons, and cut his Copiholders corne with force, for that his Copiholder

would not compound with him for his fine, and although the entry of the Lord was holden lawfull, yet punishable as a ryot in regard of his number and force.

In all cases where three (or more) shall enter into lands, &c. with force (upon the possession of another) where their entry is lawfull, yet it is a ryot, by reason of number and force; for the stat. of 5.R.2. prohibiteth the entry with force, or with multitude of people, although the entry bee (otherwise) lawfull.

What persons may commit a Ryot, &c. CHAP. 88.

IF a number of women (or children, under the age of discretion) doe flock together for their owne cause, this is no assemblie punishable by these statutes, unlesse a man of discretion moved them to assemble for the doing of some unlawfull act, as M. Marrow held:

Yet certaine women, that had apparelled themselves in mens apparell, and had pulled downe ryotously a lawfull inclosure, were worthily punished for the same in the Star-Chamber as M. Lamb reporteth.

Also women and children may commit a force, may commit larceny, and may be bound to the peace, as breakers of the peace. *Vide ante tit. Surety for the peace, & Forcible Entry. & Doct. & Stud. 147. 148.*

Concerning children, and their punishments in such cases, See *hinc cap. 77. et 118.*

Also women covert are holden to bee within the stat. of *Mert. cap. 6.* for rashment of wards; and within the stat. of *Westmin. 1. cap. 20. de Malefactoribus in parcis*: and within the stat. of *8.H. 6.* of Forcible Entry: and within the statutes of *1.El. cap. 2.* and *23.El.* for Recusancy, although they be not named within any of these statutes.

Also if a woman covert shall commit any ryot, or doe any trespassse or other wrong, shee is punishable for it; and for a trespassse done by the wife, or for a scandal published by her, the action lyeth against both the husband and wife, *sc.* an action of trespassse; or of the case, shall be brought against the husband and the wife, and there the husband is chargeable to the damages, or fine, because hee is a party to the action and judgement, (See *paulo ante tit. Forcible Entry*) but if a woman covert without her husband be indicted of a Trespassse, Ryot, or any other wrong, there the wife shall answer, and bee party to the judgement only; and in such case the fine set upon the wife shall not bee levied upon the husband; yet after the husbands death it seemeth such damages or fine shall then bee levied of the wife her selfe; And as for imprisonment, or other corporall paine, it shall be inflicted upon the wife only, and not upon the husband for his wives act or default.

And note, that any subject of this Realme, for any injury done to his person, or done to him in his lands, or goods, may pursue, and have the justice of Law, against any other subject, bee hee bond or free, bee it a woman or an infant, be they religious persons, or be they persons excommunicate, or outlawed, or other person whatsoever, without any exception, &c. for the King (by the stat. of *Magna Charta, ca. 29.*) saith, *Nalli*

non, nulli negabimus, aut differemus iustitiam, vel remedium. Dyer 104.

But if a Mayor and Aldermen, or Bailife & Burgesſes, or the Fellows of any other Society, doe aſſemble in their common quarrell, and make a ryot, or rout, this ſhall be puniſhed in their owne private naturall perſons, and not in the body politike. *Br. impr. 95.*

High Treason. CHAP. 89.

High Treason (called in Law, *Crimen leſe Maieſtatis*) is a grievous offence, done or attempted againſt the eſtate regall, viz. againſt the King (the head, life, and ruler of the Common wealth) in his perſon, the Queene his wife, his Children, Realme, or Authority; as,

To compaſſe the death of the King, the Queene his wife, or of their eldeſt ſonne and heire. 25. E. 3. cap. 2. Fi. 12.

To compaſſe the death of the father or mother of the K. or of any of the Kings children, although that ſuch compaſſing be not brought to effect, yet it is Treason, by *Britton* in his title of *Appeales*, fol. 39. *Stamf. fol. 1. p.*

To compaſſe the death of an uſurper of the Crowne, is Treason, for which the offender may bee arraigned in the time of another king, as appeareth, *Br. Treas. 10.*

To intend or imagine the death of the King or Queene, though they bring it not to effect, ſc. if they ſhall declare this by an open act, whereby it may bee knowne, or to utter it by words or letters, is treason.

To intend to deprive, depoſe, or diſinherit the King, is high Treason, if it may appeare by any open act; for no Crowne can bee taken from a Kings head, without loſſe of his head and Crowne both, ſooner or later, as his Maieſtie hath obſerved in his *juſt defence of the Right of Kings*. See *Bri. and Stamf. 1. p.*

So to ſay that hee will be King, after the Kings death, is high Treason. See the Duke of Buckinghamſ caſe, 13. H. 8. fol. 12.

M. *Glanvill* alſo, and M. *Bracton*, ſay thus, or to this effect: *Siquis machinatus fuerit, vel aliquid fecerit in mortem Domini Regis, vel ad ſeditionem Regis, vel exercitus ſui, vel conſenſerit, conſiliumve dederit, vel auxilium procuraverit, ſeu preſtiterit, licet id quod in voluntate habuit, non produxerit ad effectum, teneatur tamen criminis leſe Maieſtatis.* See *Glanv. lib. 14. fol. 110. & Bracton, lib. 2. Stamf. 1. v. x.*

And ſo note, that treason may be committed by imagination, and a reſolution to performe or doe an act, although it bee not brought to effect; as in theſe former caſes. This was the caſe of *Bigtham* and *Tereſh*, who were both hanged, onely for that they had a will to kil king *Abſhureſh*, and ſought to lay hand on him, *Eſter 2. 21. 22.*

If one that is *non Compos mentis*, doe kill, or attempt to kill the king, it is in him high treason; whereaſ pertie treason, homicide, or larceny, ſhall not be imputed to ſuch a perſon. *Vide ſtat. 33. H. 8. cap. 20.*

One Conſtable pointed to another, ſaying to his friends, Behold K. Ed. (who was then dead) and for thoſe words hee had judgement & execution as a traitor, *Dyer 128. but Co. 7. 10.* obſerveth that the words were accompanied

accompanied with other circumstances, which appeare not in our usuall printed bookes.

Also to deflower the kings wife, his eldest daughter being unmarried, or his eldest sonne and heires wife, is high treason. 25.E.3.2.

So is it, if any man shall deflower any other of the kings daughters, yea or the Nurles of any of the kings children, as M. Britton writeth, fol. 43. *Stamf. fol. 1.9.*

To levy warre against the king, &c. in this Realme, is high treason: Note that to detain or hold a castle, or fortresse, against the king, is to levy war against the king. See *Br. Treason* 24.25.E.3.cap.2.

So to conspire to levy war against the king, &c. is high treason.

Also to detain, keep, or withhold from, or against the king, any of his ships, or ordinance, or maliciously to burn, or destroy any of the kings ships; or maliciously to barre any Haven within any of the Kings Dominions; all and every of these seeme to bee included within these words [To levy war against the King] and so to bee high treason. See *Br. Treason* 24. & *stat. 14. Eliz. cap. 1. & quere.*

To sell any armour to the enemy; or to furnish the enemy with weapon or munition, have beene accounted crimes treasonable. *W. Segar Narroy, of Honor Military and Civill, pag. 14.*

If any person having a charge, shall yeeld the same up unto the enemy, this also is a crime treasonable, *ibid.*

So all explorators or spies that bewray our secrets, and informe the enemy thereof, are to be accounted traitors. *Ibid.*

To practise with a Governour of another Countrey to invade this Realme, is high treason; although such practice bee not put in ure. *Dyer* 298.

So to kill one that is sent in the kings message, 22. *Ass. Stamf. 1. 1. Br. 13.*

To encounter in fight, and kill such as are assisting to the king in his warres, or such as come to helpe the king, is high treason. 45. *Ed. 3. 25. Br. Treas. 7.*

These two last cases were holden to bee high treason, before the stat. of 25. *Ed. 3.*

To succour the Kings enemies is treason. *Thorp. 22. Ed. 3. fol. 49.*

To bee adherent to the kings enemies (aiding them, or giving them comfort, in his Realme, or elsewhere) is high treason. See *Br. Treason* 1. & 13. *Fitz. Triall. 54. & 25. E. 3. cap. 2.*

If a subject shall goe beyond the sea, and there shall adhere, or joyne himselfe with the kings enemies, and there (in such enmitie) shall die, or bee slaine, this seemeth to bee treason, and to be an attainder in law, without any more, &c. by the ancient common law of this land: as appeareth, 3. *E. 3. Fitz. Dower* 106.

So if a subject shall joyne in battell within the Realme, to the kings enemies, and shall bee slaine in the field; by the ancient common law of this Realme hee shall forfeit his lands, goods, and chattels, and his bloud shall bee corrupted, without any other judgement, for that hee himselfe is the cause that hee cannot come to the trial of Law in his life time. *Pl. 262. & 263. vide stat. 34. E. 3. cap. 12.*

But if an alien enemy come to invade this Realme, and bee taken in warre,

Dyer 145.
vi. 30.

warre, hee cannot be indicted of treason, but hee shall be put to death by martiall law, *C. 7. 6. b.* Otherwise it is of an alien, whose K. is in league or at peace with our King, hee shall bee indicted and arraigned of treason, and shall have judgement accordingly. An English traitor pleading that hee is a subject to a forreine Prince, shall notwithstanding (upon a *Nihil dicit* recorded) have judgement as a traitor. *Dy. 300.*

If any person shall joyne the Armes of England with his own Armes, it seemeth to bee high treason. See *38. H. 8. Br. Treason. 2.*

If any person shall counterfeit the Kings Armes, or the Armes of this Realme, it is high treason, as *M. Kitchin* hath it, *fol. 12.*

P. 12.
1. M. 6.
Br. 5. 17.

To counterfeit the Kings great seale, signe manuell, privy signet, or privy seale, is high treason, *25. Ed. 3. cap. 2. & 1. Mar. 6.* But before the statute *25. E. 3.* these were petty treason by the common law, *Fi.*

So to take an old seale from another Patent &c. and put it to a new Patent, &c. yet *quare* whether this bee Treason, or but misprision. *M. Stamford fol. 3. c.* faith, that it was adjudged to bee Treason in his time. *Vide ibidem.*

Also it is Treason in such, as without authority shall set the kings seale upon any writing. *Speculum Iust.*

Quare of such as shall fraudulently thrust a writing (among others) to the seale, and so get it sealed.

To counterfeit the kings money (*sc.* the coyne of this Realme, or such as by the Kings authority is coyned within this Realme, or within the Dominions thereof) is high treason *Stamf. 3. c. 25. E. 3. cap. 2.*

So to counterfeit any other coyne of any other Realme, which (by the kings Proclamation, or by act of Parliament or permission) is made currant within this Realme, is high Treason. *1. Mar. Par. 1. cap. 6. Co. L. 208.*

So to forge or counterfeit such coyne, though hee uttereth it not. *Stamf. 3. d.*

Br. 27.
P. 4.
M. El. 3.

To forge or counterfeit any coyne, which is not currant in this realme, is misprision of treason.

5. El. 14.
14. El.
P. 5. 6.

To clip, wash, round, file, impaire, diminish, lighten, or falsifie any coyne or money of this Realme, or any other Realme, allowed or suffered to bee currant within this Realme, is Treason.

1. R. 2. P.
& M. P. 3.
1. E. 1. c. 2.
Fuch.

To bring from beyond the sea, into this Realme, any false or counterfeit coyne, or money made in any other Realme, like to the coyne of this Realme (or like the coyne of any other Realme, being currant within this Realme) knowing it to bee false, to the intent to merchandise therewith, or to make payment thereof, in deceit of the King and his people, is high Treason: but to bring such money into England out of Ireland, is but misprision, though hee knoweth it, and uttereth it, *Quia Hibernia est quasi membrum Anglie.*

1. H. 7. l. 10.
Br. 19.

If hee which by the kings warrant doth coyne money (either in England, Ireland, or elsewhere) maketh it much lesse in weight than the ancient ordinance; or coyneth false mettall, it is Treason. *Br. Treason. 19.*

1. H. 7. l. 10.

So to coyne any money not having authority, or warrant to doe, is high treason. *Speculum Iustic.*

To coyne farthing tokens, is no Treason, but is punishable in the Star-Chamber

Chamber: And so Sir Francis Harvey delivered it in his charge at Cambridge Sommer Assises *An. 1631.*

To utter false money made within this realme, or other the kings dominions, knowing thereof, is misprision of treason. *3.H.7.40. Dyer: 161.*

The booke called the Mirroure of Iustices (or *Speculum Iusticiariorum*, written by M. Andrew Horne) divides these former treasons into two sorts, *sc. Le Crime de Majestie, & Le Crime de Faussonnerie.*

Le Crime de Majestie. 3.x. Such as shall kill the King, or shall compasse to doe it.
Such as shall doe or procure any thing, *ad seditionem domini Regis, vel exercitus sui.*
Such as shall deflower the kings wife, his daughter, or the wife of the kings heire.

Le Crime de Faussonnerie is in falsifying the Kings seale, two manners, *sc. by* falsifying his money.

Also to kill the kings Chancellor, Treasurer, Just. of either bench, Just. in Eyre, Iust. of Assise, or Just. of Oyer and Terminer, being in his place doing his office, is high treason. *25.Ed.3. Pd.*

But because many other like cases of treason might happen, &c. it was (by the stat. 25.E.3. *ca. 2.*) accorded, that if any other case supposed treason which is not in that statute specified, doth happen before any Iustices, the Iustices are not to proceed thereupon, untill the cause be declared before the king and his Parliament, &c.

Also by the statute of 1. Mar. Parliament 1. & Sessio. 1. it is ordained, that no act, deed, or offence, made treason, pettie treason, or misprision of treason, by any act of Parliament or statute, shall bee taken, deemed, or adjudged to bee high treason, pettie treason, or misprision of treason, but onely such as bee declared to bee treason, pettie treason, or misprision of treason, in or by the said statute made 25.E. 3. &c. any stat. made before or after the said statute of 25.E. 3. or any other declaration or matter to the contrary notwithstanding.

Note, that the counsellors, procurors, consenters, abettors, & alders to any of the aforementioned treasons, bee all within the compasse & danger of high treason, for in treason all the offenders bee principals. *Stat. 5. P. 2. 14. 15. 16. 19. H. 6. 479.*

To conceale or keep secret any high treason, is misprision of treason, *1.E. 6. c. 12. 5. & 6. Ed. 6. cap. 11 & 1. El. cap. 6. sc.* when a man shall conceale it and not discover it to the king, or to some of the kings councill, or to some other magistrate. *P. 2. 1. & 2. P. 1. Mc. 10.*

And all receivers and accessaries (to high treason) after the offence, seeme to bee in case of misprision. *Vide postea tit. Accessorie.*

To set at large unlawfully, any person that is committed to prison, ward, or custody for treason, is treason by the Common Law. See 1. H. 6. fol. 5. *Br. Treason 11.*

If one that is in prison for felony shall breake the prison, wherehy a Traitor being in the same prison shall escape, this is treason (in him that broke the prison) by the Common Law. *Vide 1. H. 6. 5. hic cap. 91.*

So voluntarily to suffer any person to escape that is committed to prison, or but under arrest for treason, this is treason by the Common Law, *Stat. 32. 1.*

If two or more doe conspire to commit high treason, and some or any one

one of them after doe commit & execute it, this is high treason in them all by the Common Law.

Co. 8. Pref. Note also that the aforesaid statute of 25.E.3. cap. 2. is but a declaration and explanation of the common law before, for all the said treasons in the said statute mentioned, were treason by the ancient common law of this Realme, before the making of the said statute.

Since which time of King Edw. 3. divers other offences were made treason, as appeareth by the statutes 22.Rich. 2. 2. H. 5. 6. 3. Hen. 5. 6. 8. H. 6. 6. 4. H. 7. 18. 22. H. 8. 9. 26. H. 8. 13. 27. H. 8. 2. 28 H. 8. 10. & 18. 31. H. 8. 32. H. 8. 25. 33. Hen. 8. 21. 35. Hen. 8. 1. and first Ed. 6. 12. all which were repealed againe by the said statute made 1. M. Parliament 1. or before, as is aforesaid. Treasons by statute.

Also since the aforesaid statute of repeale, there have beene divers other offences made or declared to bee treason, whereof some were but as an addition to, or an exposition of the treasons before specified, and mentioned in the said statute of 25.E.3. c. 2. viz. the statutes 1. H. 6. 1. & 2. P. & M. 11. 5. El. 11. 18. Eliz. 1. & 14. Eliz. 3. by which five severall statutes last mentioned, the counterfeiting of the K. seale, or abusing his coyn, & bringing in of false coyne, &c. are in some particulars more full prohibited than before, as may herein before appeare.

There are also divers other offences made high treason (by other stat. made since the beginning of the raigne of Q. Eli.) and those specially made for the preservation of the said Queen, her heires & successors, & of the dignity of the imperiall Crown of this Realme, & for the avoyding of the dishonours, inconveniences, and dangers growing to the whole estate, by meanes of the jurisdiction of the See of Rome, heretofore usurped within this Realme, &c. as hereunder appeareth.

1. El. 1. P. Rome. 1. First, the maintaining or extolling the authority of the Bishop or See of Rome, within any the Kings dominions; and the procurors, counsellors, aiders, and maintainers thereof, and every of them. The Bishop of Rome.

For the first offence they shall incur the danger of a *Præmunire*; the second offence is high treason.

Also the bringers over of any bookes, that shall maintaine, set forth, or defend any such authority; and the readers and hearers of such bookes, that shall justifie them.

And such as shall deliver any such bookes to others, with allowance and liking of the same.

Dyer 289. Co. 7. pref. And the Printers and utterers of such bookes within this Realme all and every such offenders are (by the Iudges) resolved and construed to bee within the meaning of the same stat. of 5. El. ca. 1. & their first offence to bee a *Præmunire*, the second high treason.

5. El. 1. P. Crown. 4. & 8. Again, the refusall of the oath for the kings supremacy (in all causes and over all persons, &c.) after lawful tender thereof made; the first refusall is a *Præmunire*, the second refusall is high treason.

1. Jac. 4. P. Recus. 45. The second refusall of the oath of Allegiance, being tendered according to the statute, is a *Præmunire*, & c. 7. Jac. 6. 6.

11. El. 2. P. Crown. 2. P. præm. 5. Again to obtaine or get from Rome, or from any claiming attithornie from thence, any Bull or writing, (the effect whereof is, to absolve and reconcile all those that will forsake their due obedience to the king and

and yeeld themselves to the B. of Rome,) or to give or take absolution, by colour of any such Bull; or to grant or promise any such absolution or reconciliation; or to use, publish, or put in ure, any such Bull; every such act shall be high treason, as well in the offenders, as in the procurors, abettors, and counsellors to the fact.

And all aiders, comforters, and maintainers of any such offender, after the fact shall incurre a *Premunire*. Ibid.

To conceale such Bull (or writing) or such absolution offered them, and not within six weekes to disclose it to some of the Kings privie Councill, is misprision of treason. 27. El. 2.
P. Rome 9.

To purchase or pursue (in the Court of Rome, or elsewhere) any Excommunication, Bull, or other Instrument against the K. his Crowne, or Realme; or to bring them within this Realme; or to receive them, or to make notification, or any other execution thereof, within the Realme, or without, every such offender, their procurers, maintainers, abettors, and counsellors, shall incurre the danger of a *Premunire*, 16. *R. 2. cap. 5.*

To practise (beyond the seas, or upon the seas, or elsewhere within the Kings dominions) to absolve, perswade, or withdraw any subject, or any within any his Highnesse dominions, from their obedience to his Majestie; or to reconcile them to the Pope, or to draw them to the Romish Religion, (by argument, bookes, or otherwise,) for that intent; or to move them to promise obedience to the See of Rome, or to any other Prince, to be had or used within the Kings Dominions; every such person, and their procurors, aiders, counsellors, and maintainers, knowing the same, are all in case of high treason. 27. El. 1.
P. Rome 7.
1 Jac 4.

To bee willingly absolved, perswaded, withdrawne, or reconciled, as aforesaid, or to promise any such obedience; every such person, and their procurors, counsellors, aiders, and maintainers (knowing the same) shall be adjudged Traitors, except they submit themselves, according to the statute, within six dayes after their returne into this Realme, &c. *Vide antea tit. Recusants.* 27. El. 1.
1 Jac 4.
P. Rome 7.
P. Rome 8.

To conceale any such offence, and not within 20 dayes to disclose it to some Iustice of peace, or other higher officer, is misprision of treason by the stat. 23. El. 1. P. Rome 8. 27. El. 1.
P. Julius 1.

Againe, for any Jesuit, Priest, or other Ecclesiasticall person (borne within any the Kings Dominions) and made by any authority from the Bishop of Rome, to come into, bee or remaine, in any of the Kings Dominions, contrary to this statute, is high treason.

To receive, relieve, aide, or maintaine any such Jesuit, &c. (being at liberty, and knowing him to bee a Jesuit, &c.) is felony, without benefit of Clergy. 27. El. cap. 2. P. Julius 1.
101.

To conceale such a Jesuit, &c. *sc.* not to discover them to some Iust. of peace, or other higher officer, within twelve dayes, is punishable by fine and imprisonment.

And the Iust. of peace, or other such officer, to whom such a person shall bee discovered, if within 28 dayes they give not information thereof to some of the Kings Councill, &c. they shall forfeit 100 markes. See *plus tit. Recusants.* 27. El. 1.
P. Julius 4.

If any of the kings subjects (not being Jesuit, or Ecclesiastical person) which are or shall be brought up in any Seminary, or Colledge of Jesuits, or Seminary beyond the sea, shall not (within six moneths after Proclamation in that behalfe to bee made in London, &c.) returne into this Realme, and within two daies after such returne (before the Bishop of the Diocesse, or two Iustices of P. of the Countrey where he shall arrive) submit himselfe to the Kings laws, and take the oath of Supremacy, (set forth. 1. El. 1.) then every such person which shall otherwise returne or come into this Realme, or any other his Majesties Dominions without such submission, shall be adjudged a Traitor.

For (as one saith) it may justly bee feared, not only of all Jesuits and Seminary Priests, but also of all such other (Jesuites) persons whatsoever, that shall come into his Majesties Dominions, or returne into this realme, contrary to this statute, That it is not Faith, but Faction; nor Truth but Treason; nor Religion; but Rebellion, which is the cause of their coming.

To convey, deliver, or send, yeeld, or give any reliefe, to or for any Jesuit, or Priest, &c. or other person abiding in any Seminary beyond the Seas, &c. is a *Præmunire*.

To bring into this Realme any *Agnus Dei*, crosses, pictures, beads, or such like superstitious things, consecrated by authority from the Pope, and to deliver them, or to offer or cause them to bee delivered to any subject of this Realme, is a *Præmunire*; as well in such person, as also in them that shall receive any such thing, to the intent to use or weare it.

The person to whom such *Agnus Dei*, &c. shall bee offered, must apprehend the party offering the same, & bring him to the next Just. of peace; or else must within three dayes disclose his name & place of abode, to the Ordinary, or some Justice of P. in that Countrey: and if hee received any thing, hee must deliver the same within one day to a Justice of P. of that Countrey, where the party so receiving the same shall then be resident or happen to be. And that the Justice of peace, within 14 dayes must disclose the same to one of the Kings majesties privy Councell upon danger of a *Præmunire*.

Misprision. CHAP. 90.

Here bee certaine offences which by the common law are Misprision of Treason, or at least punishable in the same degree, or in a higher degree.

As

To draw a sword to strike a Justice sitting in place of Judgement, is Misprision of Treason.

So

To strike a Juror in the presence of the Just. sitting in place of Judgement. *Br. Contemps. 9. & Fitz. Judg. 174. Fi.*

So to strike another in Westminster Hall, sitting any of the Kings Courts there. *Dier 188. Fitz. Cor. 280. Fi.*

So it seemeth to draw any weapons (therewithall to strike any person) in the presence of the Justices, or to make any affray in their presence. *Br. Paine 16. Stamf. 38.*

So to rescue any such offender. *Ibid.*

So to strike any person in the kings Court (Pallace, or other house)

the king being then in his Court. And judgement was given accordingly in such case, upon a knight, *Ann. 33. Hen. 8.* for striking another at Greenwich, the king being there, *Br. Ibid.* Yet now see the stat. of 33. H. 8. 12. That such an offender in the kings Pallace (although hee shall draw blood by striking there) hee shall forfeit neither the profits of his land, nor his goods, but shall lose his right hand, bee imprisoned during his life, and shall pay fine and ransom at the Kings pleasure: And so now such an offence done in the kings pallace, shall not have so grievous a punishment, as if it bee done in West. hall: see *Stamf. 38. d.*

But in the former cases, the offender shall have judgement as in misprison of treason, and besides shall have his right hand cut off. *Br. Paine 16. Fitz. Forf. 21. Dyer 188.*

If one of the kings Justices doe arrest one who made an affray before him sitting in place of Justice, & a stranger shall rescue the prisoner, whereby he escapeth, this is misprison of treason in them both; for that the arrest by the Justice was (in law) the arrest of the king himselfe.

Note, that every treason, or felony, doe include misprison, so that where any person hath committed treason or felony, the king may cause the offender to bee indicted and arraigned but of misprison.

Misprison is properly, when one knoweth that another hath committed, or is about for to commit any treason, or felony, but was not or is not consenting thereto, and will not discover the offender to the king, or his counsell, or to some Magistrate, but conceales the offence. *Stamf. 37. Stat. 5. E. 6. c. 11.*

For misprison of treason, the offender shall forfeit to the king his goods and chattels for ever, and the profits of his lands during his life, and also shall be imprisoned during his life. *Br. Treas. 19. & Stamf. 38.*

*The forfeit.
here.*

For misprison of felony the offender shall bee onely fined (and ransomed) by the Justices before whom hee shall be attainted, and shall be committed to prison untill hee hath paid his fine. See *Br. Treas. 25. & Finch lib. 2. fol.*

For high treason, the offender being a man, shall be drawne upon a hurdle unto the place of execution, & there shall be hanged by the neck, cut down a live, and his entrails and privie members shall be cut from his body, and bee burned within his view; and then his head shall bee cut off, and his body quartered, and then to bee disposed of at the kings will.

Also hee shall forfeit all his lands and goods to the king: yea at this day (by the stat. made 26. H. 8. cap. 13. & 5. Ed. 6. cap. 11.) his lands entailed shall be forfeited; and his wife shall lose her dower (saving in certain cases, *Vide Stamf. 182. & 187. Co. 1. 103. 3. 10. & 7. 33. 34. et Dyer 289. et 332. Plow. 237. b. 249. b. 554. b. et 559.*

But the judgement & sentence of condemnation upon a woman in case of treason, is that shee shall be drawn upon an hurdle unto the place of execution, and there burned. *Stamf. 182. c.*

In case of *Premunire*, the offender (being attainted upon the statute of 16. Rich. 2.) shall forfeit all his lands which hee hath in fee, for ever, and all his goods and chattels to the king; but his lands whereof hee hath an estate taile, hee shall forfeit onely during his life, and shall bee imprisoned

*Utile Col.
12. 31. & 32.*

*P. Prem. 19.
Br. Prem.
6. 19.
Co. 7. Pref.
& 11. 49.
Co. 3. 130.*

ned during his life. But some doe hold, that if the offender be attainted upon the stat. of 27. Ed. 3. ca. 1. there the offender shall forfeit nothing if he appeare at the day of the *Præmunire* returned. See that stat. & *Br. Præm. 6.* & *Gronp. Antor. ders. cols. 97.* Yet others doe hold that as upon the statute of 16. R. 2. cap. 5. the offenders shall forfeit their lands and goods if they be attainted (*Br. Præmun. 6. et 20.*) so upon the stat. of 27. E. 3. if the offender doe appeare and plead, and bee found guilty, he shall have the judgement of *Præmunire*, sc. to bee put out of the kings protection, and shall forfeit his lands, goods, and chattels to the king, and his body shall be imprisoned during his life, (or untill hee hath made fine & ranfome at the Kings will.) See the stat. & *Co. 1. 1. 34.* & the old *Natur. Bre. fol. 159. Co. L. 130. et 391.*

Now for the offenders in high treason, misprison of treason, & *Præmunire*, although the Justices of peace (by their commission, nor by stat.) cannot meddle with them in the very point of their offences, saving in some particulars, & that by way of inquiry only, which you may see *hic antea tit. Felony cap. 20.* Yet for that all treasons & such other offences are against the peace of the king and of the realme, therefore upon complaint made to the Just. of P. or other knowledge had by him of any such offenders, it shall be his part to cause such offenders to bee apprehended, & to joyne with some other Just. of P. in taking their examination, & the information upon oath of such as bring them, or of others that can prove any thing materiall against them, and to put the same in writing (under the hands of the informers) and then to commit the offenders to the gaole; & also to bind over by Recognisance all such as doe declare any thing materiall, to appeare & give evidence against such offenders, before the Lords of the Kings Majesties privy Councell, or in the Kings Bench, or at the Assises & Gaole delivery, or elsewhere, when they shall be called, upon reasonable warning, & after to certifie their doings therein to some of the Lords of his Majesties said Councell.

Note, that all treasons, misprison of treason, and concealement of treason, done or committed out of the Realme, shall bee inquired of, and tried within the Realme, sc. in the Kings Bench, or else before speciall Commissioners, see stat. 35. H. 8. cap. 2. et 5. E. 6. cap. 11. *P. Treas. 18. et Dyer 287. 298 132. 360. Co. 7. 23. et 11. 63.*

Pettie Treason.

CHAP. 91.

Petty treason is when wilful murder is committed (in the estate Oeconomical) upon any subject, by one that is in subjection, and oweth faith, duty, & private obedience to the party murdered, as in these cases following:

If a servant maliciously killeth his or her master or mistresse; this was *servant* petty treason by the Common Law, *Stamf. 10. i. Br. 8. 12. et Co. 11. 34. et 25. E. 3. cap. 2.*

A servant of the age of thirteene yeares, killed her mistresse, it was adjudged in her petty treason. *Br. Treas. 12.*

A servant that is departed out of service, and a yeare after killeth his master upon malice conceived when hee was in his said service, it is petty treason. *Br. Treas. 1. 5. 33. Aff. p. 7. Co. 1. 99. b.*

A servant doth procure another to kill his master, who killeth him in the servants presence; this is petty treason in the servant, and murder in

the other. See *Pl. 100. a. & Br. Cor. 119. & quere.*

But if the estranger doth kill the master in the servants absence, then the servant is onely accessary to the murder, but it is no petty treason in him.

A servant conspireth with a stranger to rob his master, and at a time appointed in the night, hee letteth in the stranger into the house, & leads him to his masters chamber, and the stranger killeth his master, the servant standing by but saying nothing, this is petty treason in the servant, and murder in the stranger: yet by some this is but murder in the servant, *ibid. & 40. Aff. Br. Cor. 119.* For where the principall is but a felon, the accessary cannot bee a traitor. See *Pl. 100. a.* that the servant is a principall in this case, & *postea tit. Accessary.*

A servant commands one to beat his master, and hee killeth him, this is petty treason in the servant, if he be present.

A servant upon malice pretended, shooreth at an estranger, & misseeth him & killeth his master, being by: this is petty treason in the servant, (though he intended no hurt to his master, yet) because he intended murder thereby.

The wife.

The wife maliciously killeth her husband, this is petty treason. 25, *Ed. 3. cap. 2.*

The husband maliciously killeth his wife, this is but murder.

The reason of this difference, is, for that the one is in subjection and oweth obedience, and not the other.

The wife & a servant doe conspire to kill the husband, and the servant killeth him in the wifes absence; this is petty treason in them both.

The wife and a stranger doe conspire to kill her husband, and hee killeth her husband in the wifes absence; this is no petty treason in the wife, but murder in the stranger, & shee shall be hanged as accessary to murder.

Also where the wife or servant procuring, conspiring, or practising such murder, at the time of such murder is in the same house, though they bee not present thereat, but are in another roome, yet it is petty treason in them, as it seemeth by two cases reported by Master *Crompton* in 4. & 5. *Mar.*

The wife poysoneth a thing, to the intent to poyson her husband therewith, the husband eateth of it, and becommeth very sicke thereof, but recovereth, after an estranger eateth thereof, and dieth thereof, this is onely murder in the wife.

The wife poysoneth an Apple, to the intent to poyson a stranger therewith, and layeth it to that purpose in a secret place, and the husband by chance eateth of it, and dieth thereof within a yeare and a day, this is petty treason in the wife, for that shee intended murder thereby.

The wife poysoneth an apple, or other thing, and delivereth it to B. (knowing nothing of the poyson) to give to C. & B. giveth it to the husband, (without the assent of the wife) who eateth thereof in the wifes absence, and he dieth thereof, this is petty treason in the wife.

And yet if A. lay impoysoned fruite for a stranger being his enemy, and his father or mother come & eat it, Sir *Fr. Bacon* maketh a *quare*, whether this be petty Treason, because it is not altogether *Crimen parisi gradus*. But saith he, *in criminalibus sufficit generalis malitia intentionis cum facto parisi gradus. Regula. 15. pag. 65, 66.*

The child maliciously killeth the father, or mother, this is petty treason

son (although the father or mother at the same time gave neither meat, drinke, nor wages to such child :) But it is treason in the child in respect of the duty of nature violated. *Vide Ba. 53.* *The child.*

A Bastard killeth his mother, this seemeth pettie treason, for the mother is certainly knowne.

The son or daughter in law, killeth the father or mother in law, with whom they dwell & doe service, & have meat and drinke, it is pettie treason, although such child take no wages; but the Indictment shall bee by the name of servant.

A clerk, or any ecclesiasticall person maliciously kils his ordinary, or superior, to whom hee oweth obedience, this is pettie treason. *19. H. 6. 47.* *A clerke.*

Note, that unto the Bishop of every Dioceffe, the Clerkes within their Dioceffe doe owe faith and obedience, which is called Canonically obedience. *Finch 137.*

Note further, that whatsoever act will prove murder between strangers, the same will make pettie treason from the servant to his master, from the wife to her husband, from the child to the father or mother, and from the clerke to his prelate or Ordinary, *Mutatis mutandis.*

Otherwise it is betweene these persons, where it is not wilfull murder: as if the servant shall kil his Master upon a sudden falling out without any malice precedent, or by misadventure; or *se defendendo*, these are not pettie Treason, neither shall the Indictment be Proditorie, &c. And so of the wife or childe.

Breaking of prison, wherby prisoners that were there in for treason doe escape, this is also pettie treason. *1. H. 6. 5. Br. 11.* *Breaker of prison.*

A Norman being Captain of an English ship, wherein also were certain Englishmen, & they robbed upon the sea, this was adjudged felonie in the Norman, & treason in the Englishmen, and they were drawn & hanged. *40. Ass. p. 25. Br. Coron. 119. & Treason 16.* *pirat.*

But at this day all felonies, robberies, murders, & pyracies, done upon the high sea, are to be tried before the Lord Admirall in the Court of the Admiralty, and according to the civill Law. Or they may bee attainted before Commissioners by force of the stat. of 28. H. 8. 15, and then they shall forfeit their lands, and their blood shall bee corrupted. *Co. L. 391. See his cap. 92.*

Also it hath beene adjudged pettie treason in some bookes, & felony in some other, for an Indictor (in case of treason, or felony) to discover the kings Councell and their fellowes (*sc.* to discover to others what person they have indicted, or if they have indicted any, then to shew to others what they have done therein, and by whose meanes, &c.) But now that offence is taken onely to be finable to the king.

The punishment of pettie treason is this: the man so offending shall be drawne and hanged: the woman shall bee burned alive, in case as well for pettie treason, as of high treason. *1. R. 3. 4.* But in case of felonies, the judgement both of man and woman is to be hanged.

Also no person or persons (bee they lay, or within holy orders, &c.) which shall bee attainted or found guilty of any manner of pettie treason, nor any accessory thereto before the fact, shall bee admitted to have the benefit of His or their Clergy. See the stat. *12. H. 7. c. 7. 23. H. 8. c. 1. 28. H. 8.*

28.H.8.cap.1.32.H.8.cap.3.1.E.6.cap.12. & 4. & 5.Ph. & Ma.cap.4.

Forfeiture. The forfeiture for pettie treason, is, the king shall have his goods, & for his lands the king shall have *annum, decem, et vastum*, & the Elſcheat thereof shall be to every Lord, of his own proper fee. 25.Ed.3.cap.2. But for pettie treason, or felony, if the offender hath but an estate taile in his land, hee shall forfeit them but onely during his life, *Stamf.* 188.187. And for petty treason, if the husband be attainted, the wife shall be barred of her Dower. *Co.L.* 37.

The Justices of peace may inquire of pettie treason, as of felony: and out of their Sessions, every Justice of P. may deale with the offenders therein, as in case of felony, by examination of the offenders, by taking information against them, and binding over the informers to the generall Gaole delivery, and by committing the offenders to the Gaole.

Of Felonies by the Common Law. CHAP. 92.

FElony, by some this word is derived, *quasi felleo animo factum L. et Co.* 4.124. *Ideo dicta est fellonia, quia fieri debet felleo animo*, (with a mind as bitter as gall.) *Mingh. verbo felon*, saith it cometh of the french word *felon*, *id est atrox, crudelis: vel a velando, cum celari et occultari semper velit.*

By the Law at this day, under the word *Felony*, is included petty treason, murder, homicide, chancemedley, *Se defendendo*, burglary, robbery, theft, rape, burning of houses, petty larceny, rescous, and escape, &c. *Co.L.* 391.

Homicide. Homicide most properly is, *hominis occasio ab homine facta*; for if a man be killed by a beast (as a horse, or a dog) or by any other thing or mischance, although that bee *hominis cedium*, (of which two words Homicide is derived) yet in such cases it is not aptly nor usually said that homicide is committed, but onely a man is said to bee slaine.

Others doe thus define or describe it; Homicide is the felonious killing of one man by another within the Realme, and living under the kings protection. Lamb-esp.

But to kill a man beyond the seas, or to strike and give one a mortall wound beyond the seas, or upon the sea, wheretupon hee dieth upon the land (within this Realme) these homicides are not punishable as felony by the Common Law; for that they cannot be inquired of, nor tried here: for in criminall cases, the rule is, *Vbi quis delinquit, ibi punietur*: So *Co.* 2.93.6. 47. But in treason it is otherwise: See hereof *paulo antea*, cap.89. et 91.

And yet all appeales to be made of things done out of the Realme, shall bee tried before the Constable & Marshall of England by the stat. 1.H.4. cap.14. So that if any of the kings subjects shall be killed, by another of the kings subjects in Scotland, or in any forreine Realme, the wife or heire of him which is so slaine may have an appeale thereof in England before the Constable and Marshall, &c. *Stamf.* 65. b. *P. Co.L.* 74.

Also to kill a man upon the sea, although it bee not triable by the common Law, yet it is felony, and is enquirable and triable in the Admirall Court; for those of the Admiralty have jurisdiction where both the stroke and dying is upon the sea; otherwise nor. And therefore in 25. *Edw.* it was adjudged in one *Lacyes* case, that where the said *Lacy* had stricken *Pedroche*, and given him a mortall wound upon the sea, whereof *Pedroche* dyed at Scarborough (in Yorkshire,) the said *Lacy* was discharged Mie cap. 91.

charged thereof, for that those of the county of Yorke could not enquire of the death without enquiry of the stroke, and the stroke they could not enquire, for that it was not given within any county. See *Ca. 2.93 et 5.106. 107. et Stat. 15. E. 2. c. 3. et 2. H. 5. cap. 6.* But yet by the statutes made *Anno 27 H. 8. c. 4. et 28. Hen. 8. cap. 5.* all offences of Pyracie, robbery, murder, or other felony done or committed upon the sea (or in any other Haven, River, or Creeke where the Admirall pretends to have jurisdiction) shall bee enquired of, heard, tried, and determined in such shires and places within the realme, and before such persons as shall bee limited and appointed by the kings Commission; and after the common course of the lawes of the land, used for felonies committed within the Realme, and such as shall be so convicted of any such offence, shall have & suffer such paines of death, and forfeiture of lands & goods, as if they were convicted of murder or felony done upon the land.

1 Amb. 243. But whether hee that is slaine, be an Alien, or a Denizen, an Englishman or stranger, it maketh no difference (if he live under the Kings protection.)

Ca. 41. 74. Comp. 24. To kill a man that is attainted (by verdict, or by outlawry, or otherwise) of any murder, felony, or treason, is felony: for none may kill or put to death any of these, but the officer of Justice, & by lawfull warrant. See *Doct. & Student f. 133. Co. L. 128. b.*

Also to kill a man attainted upon a *Premunire*, is felony at this day. See the *stat. 5. E. 2. c. 1. & Co. 7. 14. Co. L. 130.*

Co. 7. 14. Also to kill a man that hath abjured the Realme, is felony: See *Co. 7. 9. b.* and the *Doct. & Student f. 133.*

For note, that the kings protection belongeth by the law of Nature to all these, and the king may protect and pardon them all.

Homicide is threefold	{	<i>Voluntate: est</i>	Murder,
		<i>dolox.</i>	Man slaughter, or Chance-medley.
		<i>Casu, or Misadventure:</i>	this also Lawfull,
		is considerable after two sorts,	or
		<i>sc. whether it happen in doing</i>	Unlawfull.
		a thing	
	{	<i>Necessitate:</i> this	Commanded, <i>sc.</i> in execution of Justice.
is sometimes		tolerated <i>sc.</i> for advancement of Justice.	
		Prohibited. See <i>post tit. Homicide, c. 98.</i>	

Felo de se,

BUt first to write something of *Felo de se.*
For the hainousnes thereof, it is to be observed, that it is an offence against God, against the King, and against Nature; also it is within the degree of, or of the quality of murder, *sc.* pretended and resolved of (in his mind) to bee done, before it bee done, yea it is holden to bee a greater offence, than to kill another man. *Pl. 261.*

And yet the civill Law maketh a difference of such offenders, and of their punishment, according to the quality of their minds, whereby they were moved to kill themselves; for if they kill themselves through griefe or impatience of some infirmity, no punishment followeth such their fact (by the civill Law) but they are left to the Tribunall of the Almighty Judge

Judge of the quicke & the dead; but if they kill themselves upon any other cause, their goods are confiscated, & their dead bodies (for the terror of others) are drawne out of the house, &c. with ropes, by a horse, to a place appointed for punishment, or shame, where the dead body is hanged upon a Gibbet; And none may take downe the bodie, but by the authority of the Magistrate, &c. *Vide Fulbecke 90.*

But by the Common Law, if a man kill himselfe (either with a meditate hatred against his own life, or out of distraction, or other humor) he is called *Felo de se*; & he shall forfeit to the king all his goods and chattels reall & personall, and his debts due to him by specialty (but no debts due to him without specialty or upon simple contract. *Dyer 262. 16.E.4.7.*)

And their goods are usually granted & allowed by the King, to the Bishop Almoner, and in such sort as *Deadlands* are. *Ba. 3.V.*

But hee shall not forfeit his lands, neither shall his blood be corrupt. See *Fitz. Coron. 362. et 426.*

If a man doe give himselfe a deadly wound, & dieth thereof within a yeare & a day after, all his goods, &c. which he had at the time of the blow given, or at any time after, shall bee forfeited to the king. *Plow. 262. ab.*

Yet the goods of *Felo de se*, bee not forfeited till his death be presented and found of Record: neither can these goods be claimed by prescription, (by Lords of Liberties, &c.) but by the kings grant. *Co. 4. 116. 31. 42. 7. 39.*

And although hee cannot be attainted of his owne death, for that hee is dead before that there is any time to attaint him, yet the finding of his death by the Coroner (or other person thereto authorized) is by law equivalent to an attainder in deed, as to his goods. *Plow. 258. b.*

If *A.* doe strike *B.* to the ground, & then draweth his knife to kill *B.* and *B.* lying upon the ground draweth his knife to defend himselfe, and *A.* is so hasty to kil *B.* that hee falleth upon *B.* his knife, and so *A.* is slaine, here *A.* in a manner is *Felo de se*: and yet shall not *A.* forfeit his goods in this case. *Br. Cor. 12. See 44. Ass. p. 17. Br. Cor. 12. & 14. that A. was after adjudged not to bee Felo de se in this case.*

If *A.* of malice propenced dischargeth a pistoll at *B.* & misseth him, & throwes downe his pistoll & flyeth, and *B.* pursueth him to kill him, whereupon *A.* turning falleth downe, his dagger drawne, & *B.* through haste falleth upon the dagger, here *B.* is *Felo de se*, & *A.* shall goe quit. *44.E.3. Sir Fr. Bacon. 4. 5.*

If a caliver bee discharged with a murtherous intent at *I.S.* & the peece breaks, and strike into the eye of him that dischargeth it, & killeth him, he is *Felo de se*; and yet his intention was not to hurt himselfe: for *felonis de se*, and murther, are *Crimina paris gradus*. See *Ibid. pag. 65.*

If one that wanteth discretion, killeth himselfe (as an infant, or a man *Non compos mentis*) he shall not forfeit his goods, &c. *Stam. 17.*

If a lunaticke person killeth himselfe, hee shall forfeit his goods (*Fitz. Coron. 324.*) but this must bee understood when hee killeth himselfe out of his lunacy: otherwise it is if hee kils himselfe during his lunacy, for then hee shall neither forfeit his goods, nor bee counted *Felo de se*. *Co. 4. 116.*

If one being of *Non sane memorie*, or a lunaticke, giveth himselfe a mortall wound, and after hee becommeth of sound memory, and then dieth of the same wound, in this case although hee dieth, by reason of his owne proper

proper stroke, yet for that the originall cause was committed when he was *de non sane memorie*, he shall not be accounted *Fe'o de se*, neither shall hee forfeit any thing, for that the death hath relation to the originall act, the which was the stroke or wound, given when hee was *de non sane memorie*.
Co. 1. 99. b. § 4. 42. a Fitz. Cor. 244. Pl. 160.

The inquirie of such a felony belongeth to the Coroner: And yet if *Felo de se* be cast into the sea, or so secretly buried, that the Coroner cannot have the sight of his body, and so cannot inquire thereof; then the Justices of peace, or any other having authority to inquire of Felonies, may inquire thereof (for that is felony :) and a Presentment thereof found before them, intituleth the king in his goods.

Murder. CHAP. 93.

Of old time every killing of one man by another, was called Murder (of the effect) because death ensued of it. Afterward murder was restrained to a secret killing only; & therefore *Bracton* & *Britton* in their definition of Murder, calleth it *Occult: or casso nullo presente, &c.* But since murder hath been, & is taken in a middle degree, neither so largely as it first was, nor so narrowly as *M. Bracton* & *Britton* speake of it. For murder is now construed to be when one man upon malice pretended, premeditated (*sc.* forethought) or precedent & with his will, doth kill another feloniously, *viz.* with a premeditate & malicious mind, whether it be openly or privily done this is felony of death, without any benefit of Clergy. 23. H. 8. cap. 1. & 1. Ed. 6. cap. 12. See *Exod.* 21. 14. he shall be taken from the Altar & put to death.

This malice pretended or precedent, may be either apparent (as where there was a precedent falling out; or where there is a lying in wait, or a time and place appointed, &c.) or it may be lesse apparent or manifest, and yet shall be implied, presumed, and taken to bee out of malice precedent, by the manner and circumstances thereof.

As where one killeth another without any provocation, the Law implieth and adjudgeth it to have proceeded of malice premeditated: Therefore if one suddenly, & without any shew of quarrell, or offence offered, shall draw his weapon, and therewith kill another.

Or if one shall bee reading of some book, or otherwise busied, so as hee saw not the party that shall stab or strike him (and hee dieth thereof;) or shall bee going over a stile, &c. and another shall kill him; such offenders shall suffer death as in case of wilfull murder.

And accordingly hath the statute 1. Jac. well provided, that if one shall stab, strike, or thrust another, that hath not then a weapon drawne, or hath not then first stricken the other, and if the party so stabbed, stricken, or thrust, &c. shall die thereof within six moneths after, although it cannot bee proved that the same was done of malice forethought, yet the offender being thereof lawfully convicted, shall suffer death as a wilfull murderer, without benefit of Clergy.

To kill the Sherife or any of his officers, in their execution of the Kings processe, or in doing their office, is murder in him that killeth the officer.

But if hee bee not an officer knowne, hee must shew his Warrant before he arrest the party, or upon the arrest (if the other shall demand to see it) or else it seemeth the arrest is tortious; And where the arrest is tortious (be it by

by an officer known, or by another) there the killing of him that maketh such an unlawful arrest, is no murder, but man-slaughter only, as it seemeth. Co. 9. 61.
 Againe, where an officer hath the Kings writ, or other lawfull warrant, though it bee erroneous, yet in the executing thereof if he be slain, this is murder. Co. 9. 68.

For the Officer is not to dispute of the validity of his Warrant, or the authority of the Court (or of the Justice of peace) that sent the warrant; but his office is to execute the Writ or warrant.

To kil any Magistrate, or minister of Just, in the execution of their office, or in keeping the peace (according to the dutie of their office) is murder in such offenders, for their contempt and disobedience to the King and the law; and the Law implieth it to bee of malice prepenced. And therefore if the Sherife, Justice of peace, high Constable, petty Constable, Watchmen, or any other minister of the King, or any that come in their aid bee killed in doing their office, this is murder. Co. 4. 47. & 9. 68. 22. Eliz. Crompt. 15.

If the Sherife, or Justice of peace come to suppress Riotors, & one of the sherife or Justices company is slain by one of the Riotors, this is murder in all the Riotors that be there present.

A Constable with others to ayd him, doe come to part an affray, if the Constable or any of his company shall be slaine in doing this his office, it is murder in him that killed him, although the affray were on the sudden, & though it were in the night: for when the Constable commands them in the Kings name to keep the peace, although they cannot know him to be a Constable, yet at their perill they ought to obey him upon such commandement. Co. 4. 40. Co. 9. 64.

And in these cases the killing of such an officer, or of any of their company, is in Law intended to be by malice pretended: *sc.* that the murderer had a malicious resolution in him, to oppose himselfe against the law, the officers thereof, and the Justices of the Realme. Co. 9. 61.

Also if a thiefe that offereth to rob a true man, killeth the true man in resisting him it is murder of malice pretended. Plow. 474. Co. 9. 67. Plow. 474.

A man carried his father (being sicke and against his will) in a frosty and cold time, from one towne to another, and the father died thereof; this was adjudged murder in the sonne. 2 E. 3. 18.

A Harlot delivered of a child, hid it in an orchard (it being alive) & covered it with leaves, and a Kite stricke at it, and the child dyed thereof; & the mother was arraigned & executed for murder. 2. Eliz. Crompt. 34.

A man hath a beast that is accustomed to doe hurt, & the owner knowing thereof, doth not tie him, or otherwise keep him fast shut up, but suffereth him to goe at libertie, & after the beast killeth a man, this is felony in the owner of the beast, for by such sufferance the owner seemeth to have a will to kill. Fit. Co. 317. 1. 318. 1. 17. Exod. 21. 37.

So if a man hath a horse of that property that he will strike such as come neere him, & his master knowing this, rideth upon the same horse amongst a multitude of people, &c. and the horse killeth a man, this is felony in the master. *Let. M. Cocke.*

And in these foure last cases, *voluntas reputabitur pro facto*, death ensuing thereupon: For it may plainly appeare, that they had a will & meaning of that harme which followed, which will in them doth amount to malice, and

and so makes their offences to bee murder, & in such cases where death ensueth *Nihil interest utrum quis occidat an causam mortis praebeat.*

If a man perswades another to kill himself, & bee present when he doth it, he is a Murtherer. *Ed. 65.*

The book called *Speculum Iusticiar.* speaking of *Homicide voluntate*, saith it may be, either by striking, imprisonment, famine, or other paine.

1. By striking, or stabbing, &c. as you may see by that already said.

2. By imprisonment; as if a man by imprisonment shall detaine the body of another (under colour of law, or right) unto death, or so as hee dyeth thereby. See *hic cap. 107. verbo Gaoler.*

3 By famine; as if a man shall cast, or leave an Infant, or other person which cannot goe, in a desert or such other place, where no person usually resorts, by reason whereof such infant, or other impotent person, dieth for want of succour, &c.

4 By paine; as if a man by torture (or *Dures*) causeth another to accuse himselfe mortally, where in truth hee did not the thing, but to bee rid of the paine (rather desiring death) he confesseth himself guilty of the felony, when he is not guilty.

1. Cor. 169.
accusator.

If a man dieth in the hand of a Physitian or Surgeon authorised to practise, this is no felonie in the Physitian, or Surgeon. And if a Physitian bearing malice to one who is under his cure, shall give him a medicine contrary to his disease, whereof the patient dieth, this is felony in the Physitian. *Lectur. M. Cocke.*

If a Surgeon authorised, doe through negligence in his Cure cause the party to die, the Surgeon shall not be brought in question of his life; & yet if he doe only hurt the wound whereby the cure is cast back, & death ensues not, he is subject to an action upon the case for his misfeasance. *Sr. Fr. Ed. 37.*

1. H. 4. 41.
Lamb. 257.

And if one which is no Physitian, or Surgeon (or which is not allowed to use or practise such faculty, will take a cure upon him, & his Patient dyeth under his hand; this hath beene holden to bee felony: but *quere* of this last case, for it cannot be discerned whether the patients death commeth by any wilfull default, in the party taking such cure upon him, or by the patients infirmity: again, there appeareth in them no will to doe harme, but rather to doe good, & then the stat. of 34. H. 8. 8. leaveth so great a liberty of such practice to unskilfull persons, that it will be hard now to make it felony. But if a Smith or other person (having skill only in dressing or curing the diseases of horses, or other cattell) shall take upon him the cutting, or letting blood, or such like cure of a man, who dyeth thereof this seemeth to be felony; for the rule is, *Quod quisque norit, in hoc se exerceat.*

Crompt. 23.

Two playing at Tables, fall out in their game, & the one killeth the other with a dagger suddenly, this was holden murder, in one *Emeryes* case, before *Bromley* at the Assises in Cheshire about 27. *Elas* Master *Crompton* reporteth.

Crompt. 25.

The husband, upon words betweene him and his wife, suddenly stroke his wife with a pestel, wheron she died, & it was adjudged murder at the Assises at Stafford before *Walmesley*. 43. *Eliz.*

Quere the reason why it should bee murder in these two last cases, considering there appeareth no precedent malice, and that it was done upon the sudden, and upon provocation.

Lamb. 247.

A. hath wounded *B.* in fight, & after they meet suddenly & fight againe, and *B.* killeth *A.* this seemeth murder, & malice shall be intended in *B.* upon

on

on the former hurt: but now if *A.* had killed *B.* this seemeth but manslaughter in *A.* for his former malice shall be thought to be appeased by the hurt he first did to *B.*

Two were in suit, & they meet suddenly, and quarrell about the suit, and the Defendant killeth the Plaintiff; this seemeth murder, *Tamen quere.*

If *A.* of malice premeditated discharge a pistol at *B.* & misseth him, & throws down his pistol & flies, & *B.* pursueth him to kill him, wherupon *A.* turneth and killeth *B.* with a dagger; if the law should consider the last impulsive cause, it should say that it was in his own defence: But the Law is otherwise, for it is but a pursuance & execution of the first murderous intent: & the first motive will be principally regarded, and not the last impulsion. Otherwise if there had been a full interruption. Sir *Fr. Bacon.* 4.

Poisoning. Also wilfull killing of another by poyson, was, and is murder by the Common Law. See *Stamf.* 21. & *Br. Indictment* 41.

And the offenders therein, their aiders, abettors, procurors, & counsellors shall suffer death, & forfeit in every behalfe, as in other cases of wilfull murder of malice premeditated. 1. E. 6. cap. 12. *Speculum Iustic.* describeth these offenders thus. *Qui domet auctor a manger, ou autrement chose envenom.*

The husband gave a poisoned apple to his wife, to the intent to kill her, & she not knowing of it to be poisoned, gave it to her child, who died thereof, this is murder in the husband, and yet he loved that child deerely: & so had it been if a stranger of his own accord had after eaten thereof, and dyed thereof: for the putting of poyson into the apple, &c. upon an evill and felonious intent, maketh it murder, whosoever be killed thereby.

A. bringeth drinke that was poysoned (knowing of it) to *B.* and advised *B.* to drinke of it; telling him it would doe him much good; by reason of which perswasion, *B.* drinke of it (in the absence of *A.*) & died thereof, this was adjudged murder in *A.* although he were not present at the time of the taking of the poyson.

If one giveth corrupt victuall to another, to the intent to poyson him, & he dieth thereof within the yeare & day, this is murder. One layeth corruption at another mans doore, to the intent to poison him with the favour thereof, and the other party taketh infection by the favour thereof, & dieth; this is felony. *Leff. M. Cocke.*

So if one giveth to another *S* purge comfets, or other such thing, in sport, & not in malice, & he that so taketh them dieth thereof; this is felonie. *Ibid.*

But if a man shall prepare Rats-bane, &c. to kill Rats, &c. & shall lay this in certaine places to that purpose, without any evill intent, (sc. without any intent to kill any reasonable creature) and another man finds and eats this and dieth thereof, yet this is no felony. *Plo.* 474.

The master upon malice precedent, goeth to kill another, & taketh his servants with him, (but they knowing nothing of their masters intent) and the master and his servants doe meet the other, and the master doth assault him, & the servants taking their masters part, doe also assault & kill him, this is murder in the master, and but manslaughter in the servants.

Note, that when a man hath malice to one, & intending & endeavouring to kill him, he killeth another man, this is murder whomsoever he killeth *vi.* *Plo.* 101. *Dyer* 128. *Fitts. Cor.* 262. *Stamf.* 16. For his intent was to doe murder.

Nay, if two fight upon malice pretended, and in their fight a stranger (that would part them) commeth between them, & is killed, this is murder in them both, if it may not be proved which of them did kill him.

A man upon malice, shooteth at one, or lyeth in wait to kill one, and falleth

killeth another unwittingly, in both these cases it is murder.

2 Note also that in all cases where a man commeth or goeth about to doe any thing unlawfull, as to kill, beat, or disfigure another, or to doe any other trespassse, and in doing this, he killeth any man, this is murder. See *Cromp. 24.b.*

One stealing Peares in another mans Orchard, and the owner came and rebuked him, and the other killed him, this was adjudged murder, *4. Marie.*

Also where a man commandeth another to beat *A.* and hee beateth him, so as *A.* dieth thereof, this is murder in him that gave the commandement to beat him, for that hee commanded him to doe an unlawfull act, by reason whereof the killing of a man ensued.

For (as that late reverend & learned Judge Sir *John Dodderidge* pag. 138. sheweth) There is an efficient cause Casual, as if a man intend to doe any unlawfull act, & in doing thereof another hurt ensueeth, not intended, but by chance cleane beyond all expectation, or desire, yet shall he be said the author of that act not intended, (& so happening by chance) that did intend the first act.

3 Note also, that if divers persons come in one company to doe any unlawfull thing, as to kill, rob, or beat a man, or to commit any ryot, or affray, or to doe any other trespassse, and one of them in doing thereof, killeth a man, this shall bee adjudged murder in them all that are present of that party abetting him & consenting to the act, or ready to aid him, although they did but looke on, &c. See *Stamf. 40. Fitz. Indisment 22. Plo. 98.*

Nay, if they bee not present, yet if they bee in the same house, or upon the same ground, it is murder in them all. See the Lord *Dacres* case, *Cromp. 25.*

4 Note also, that all that are present, and ayding, abetting, or comforting to another to doe murder, are principall murderers, although they shall give never a stroke. See more *4.H. 7. 18. 13.H. 7. 10. Fitz. Coron. 309. Co. 9. 67. 112. & 115.*

As if *A.* and *B.* fall out, and appoint the field, and they meete accordingly, each of them bringing company with them, *A.* killeth *B.* this is murder in all those that came with *A.* as his second, or abetting, comforting, or ready to assist or ayde him, for that the presence of these other that came with *A.* is a terror to *B.* and an encouragement to *A.* *Vide ibid. & Plo. 98.*

And yet if *B.* commeth in the company of *C.* who of his malice pretended doth goe to kill *D.* and when *B.* seeth them fighting together, hee taketh part with *C.* suddenly (not having any former malice to *D.*) and striketh at *D.* with the other, and *D.* is thus slaine amongst them, this is but manslaughter in *B.* for that hee had no malice precedent. *Plo. 106.* See the case of the Master and his servants here before. But note, that the cause of the comming of *B.* being unknowne to *D.* his presence might, and in likelihood did, strike terror in *D.* and so the presence of the servants did or might strike a terror in the party murdered, and gave encouragement to the master.

5 Note also that in case of murder, it is not materiall who giveth the first blow; for if hee that is slaine gave the first blow, yet if there were malice

malice prepedned in the other, it is murder in him that killed him.

6 Also in case of poysoning, the party poysoned must die thereof, within a yeare and a day, after the poyson received.

Also if a man doe beat or hurt another, whereof hee dieth, to make it murder or other homicide, the party hurt must die within a yeare and a day next after the hurt done, or stroke given. But to have an appeale, it shall have relation to the death, and not to the stroke, so as the appeale must bee brought within the yeare after the death, & not after the stroke.

7 Note also in murder, or other homicide, the party killed must bee in esse (*sc. in rerum natura*, and borne into the world.) For if a man hurteth a woman with child, whereby hee killeth the Infant in its mothers wombe, by our law (at this day) this is no felony; neither shall hee forfeit any thing for such offence: & whether (upon a blow or hurt given to a woman with child) the child die within her body, or shortly after her delivery, it maketh no difference: yet in ancient time it was holden to bee felony; and M. *Braddon* tooke it to bee homicide, if the blow were given, *postquam puerperium animatum fuerit*: But if the mother of the child die within a yeare and a day after such hurt done to her, and vpon that hurt, this is felony.

So if the Adulterer &c. counselleth the woman to murder the child when it shall bee borne, and shee doth accordingly, the Adulterer is accessory to this felony, by this his counsell given before the birth. *Co. 7. 9.*

Also if one killeth a man unknowne, yet it is felony. *Abr. d' Aff. 76.*

8 Compulsion also is a good excuse in our law; so as if any mans arme bee drawne by compulsion, and the weapon in his hand by means thereof doth kill another, this is not felony in him whose arme was so drawne, &c. *Plow. 19. a.*

9 Involuntary ignorance excuseth also with us: So as if an Infant not having intelligence, or a man of *non sane memorie*, shall kill another, this is no felony in them. See hereof *hic postea*.

10 Intent to doe a felony, or murder, is not punishable by the common law of this Realme, untill the act bee done: But in Treason, and in some other particular cases by statute, the intent may bee punished. *Doct. & Stud. 132. hic*,

In cases of murder or poysoning, the offenders shall not have the benefit of Clergie. *1. E. 6. c. 12. 23. H. 8. 1. & 26. H. 8. 12.*

Note also, that by the Law of God no recompence was to bee taken for the life of a murderer. *Numb. 35. 31.*

And by divers old statutes, no charter of pardon ought to bee granted to any person in case of murder, or other homicide, save only where the King may doe it by his oath, that is to say, where a man killeth another in his owne defence, or by misfortune. See *P. Pardon 1.* See also the stat. of *6. Edw. 1. cap. 9. 2. Edw. 3. cap. 2. 4. Edw. 3. cap. 13. & 14. E. 3. cap. 15.*

And by our Law at this day, a pardon of all felonies will not discharge murder, except the pardon bee with a *Non obstante*, &c. or that murder bee expressly mentioned in the Pardon. See *Co. 6. 13. b.*

Neither will a Pardon of all felonies discharge a man that is attainted of felony, except also the attainder and the execution bee pardoned.

See

See 9.E.4.29.Co.6.13.b.

Note, that hee which hath a Pardon for felony, if hee hath not found ſureties for his good abearing, or if afterwards during his life, hee ſhall breake the peace; ſuch pardon ſhall bee holden for none, but that hee may bee hanged, notwithstanding his pardon; for by the pardon, the offence, *tegitur non ſollitur*. See the ſtat. 10. E.2.c.3.P. Pardon.5. & 3.H.7.7. where one was executed upon this ſtatute, for making an aſſay after his pardon.Br.Coron.134.

None have authority to pardon any treason, murder, or other felony, or any acceſſary to the ſame, ſave onely the king; it being one of his royall prerogatives.

Manſlaughter. CHAP. 94.

MAnſlaughter in the right ſignification thereof implieth all manner of Homicide, and is the generall, as well to murder as to the reſt: Nevertheſſe for that in common ſpeech it is reſtrained to manſlaughter by Chancemedley alone, in that ſenſe I will here write of it.

Manſlaughter, otherwiſe called Chancemedly, is the killing of a man feloniously, ſc. with a mans will upon preſent heate, and yet without any malice forethought; as when two doe quarrell and fight together upon the ſudden and by meere chance, without any malice precedent, and one of them doth kill the other, this alſo is felony of death.Plo.101.Br.Coron.222.

And yet in caſe of manſlaughter (not being within the ſtat. of 1.Iac.) the offender ſhall have the benefit of Clergy: and by the law of God, there was a city of refuge appointed for ſuch to flie unto. Exod.21.13.De.19.34. For in ſuch caſes of chance (as wee term it) ſc. where the offendor hath not laid wait, nor hated in time paſt, the ſame Scripture ſaith, that God offered the party ſo ſlain into the hands of ſuch manſlayer.

Two fall out upon the ſudden, and fight, and the one breaketh his weapon, and a ſtranger ſtanding by (yet being none of their company) lendeth him a weapon, and therewith hee killeth the other; this is manſlaughter as well in him that killed the other, as in the ſtranger, who lent him his weapon.

A. and B. fall out upon a ſudden, & fight, and A. is ſo fierce, that hee runneth upon the others weapon, & is ſlain, yet this ſeemeth manſlaughter in B. for hee ſhould have fled to ſome wall or ſtraight, &c. *Quere*.

And if B. had fled to a wall, &c. and A. purſueth him, and B. perceiving that A. would aſſault him, holdeth his weapon betweene them, and A. runneth upon the weapon, and is ſlaine, this is Homicide in his owne defence, and for which B. ſhall forfeit only his goods: but otherwiſe it had bene if B. had fallen, and lying upon the ground had drawe his knife or dagger, and A. falleth thereon, and ſo is ſlaine; for then B. could not flie, nor make any other defence for his ſafety, and therefore here B. ſhall not forfeit his goods, nor bee culpable of his death, but bee diſcharged: for A. in manner killed himſelfe. See hereof poſtea, & cap.92.

Two combat together upon the ſudden, and part, and preſently after meete and fight againe, and the one killeth the other: or the one preſently fetcheth a weapon, & cometh & killeth the other; theſe ſeeme

but manſlaughter, for that it is done all in one continuing fury, which was at the firſt without malice, and could not in ſo ſhort time be appealed, or allwaged. *Cromp. 23. b. 24. a. 26. a. b.*

So if two have borne malice the one to the other, & bee reconciled, and after meeting againe, they fall out upon new occaſion, & by agreement immediately they goe into the field to fight, and the one killeth the other, this ſeemeth but manſlaughter, (*cauſa qua ſupra*) unleſſe the reſpite or diſtance of time or place had been ſuch, that by reaſonable conjecture their heat might be allwaged.

See more of Manſlaughter before in Murder, and after in Miſadventure.

What perſons are chargeable with Homicide, and what not. CHAP. 95.

Non compos mentis.

IF one that is *Non compos mentis*, or an ideot, kill a man, this is no felony; for they have not knowledge of good and evil, nor can have a felonious intent, nor a will or minde to doe harme: And no felony or murder can bee committed without a felonious intent, and purpoſe; for it is called *Felonia*, quia fieri debet ſelleo animo. *Co. 4. 124. b.*

And againe, *actus non facit reum, niſi mens ſit rea*; and a mad man is *Amentis*; *id eſt, ſine mente*, without his mind or diſcretion, and is only, and enough puniſhed by his madneſſe. *Co. L. 247.*

So it is, if a lunatike perſon killeth another during his lunacie, it is no felony; (*Plo. 260.*) for all acts done by him in his lunacie, are as the acts of an Ideot, *Co. 4. 125.*

Vocr. tiels perſons ſerra puny in Treſpas, pur hurt fait al corps d' auter.

If another man ſhall upon malice procure a mad man to kill another, though the mad man ſhall bee excuſed, yet the incitor or procuror ſhall be puniſhed as a principall. *Ba. 57. Vide hic. cap. 108.*

Now there be three ſorts of perſons accounted *Non compos mentis*, to this purpoſe, and the like.

1 A foole naturall, who is ſo (*a nativitate*) from his birth; and in ſuch a one there is no hope of recovery. *Co. 124.*

2 He who was once of good and ſound memory, and after (by ſickneſſe, hurt, or other accident, or viſitation of God) loſeth his memory.

3 A lunatike, *qui gaudet lucidis intervallis*, and ſometimes is of good underſtanding and memory, and ſometimes is *non compos mentis*.

Infant.

An Infant of eight yeares of age, or above, may commit Homicide, and ſhall be hanged for it, *viz.* if it may appeare (by hiding of the perſon ſlaine; by excuſing it, or by any other act) that he had knowledge of good & evil, and of the perill and danger of that offence. See *3. H. 7. 1. & 12. Stamsf. 27. Fitz. Coron. 118. 129. & Br. Coron. 133, 136.*

And yet Sir *Edw. Coke* upon *Littl. ton fol. 247.* ſaith, that it is of an Infant, untill hee be of the age of 14 yeares (which in law is accounted the age of diſcretion) as it is with a man *Non compos mentis*; and that in criminall cauſes (as felony &c.) his act and wrong ſhall not be imputed to him, for that *Actus non facit reum, niſi mens ſit rea*, &c. Sir *Fr. Bacon.* 38. accordeth.

But an Infant of ſuch tender yeares, as that hee hath no diſcretion or intelligence,

intelligence, if hee kill a man, that is not felony in him. 3. H. 7. 1. b.

If one that is dumbe killeth a man, it is felony: yet *quere* how hee shall be arraigned.

A man borne deafe and dumbe, killeth another, that is no felony: for hee cannot know whether hee did evill or no; neither can hee have a felonious intent, &c. See hereof *tit. surely for the peace antia. Cap. 68.* Otherwise if hee were not so borne, but betommeth so afterwards. See *Br. Cor. 101. & 217.* that a man which can neither heare nor speake may commit felony, and shall bee imprisoned &c.

Yet note in these former cases of Homicide, committed by persons being *Non compos mentis*, or wanting discretion, such things happen by an involuntary ignorance, and therefore the law accounteth such act of theirs to be no felony.

But if a man that is drunke, killeth another, that is felony of death, for it is a voluntary ignorance in him; in as much as such ignorance cometh to him by his owne act and folly. Sir *Edw. Co. L. 247.* calleth a drunkard, *voluntarius Damon*, and saith that such a one hath no priviledge thereby, but what hurt or ill soever hee doth, his drunkenness doth aggravate it.

Misadventure. CHAP. 96.

BY the Statute of *Mart. cap. 25.* killing a man by misfortune onely, shall not bee adjudged murder.

Now Homicide by misadventure or misfortune, is when any person doing of a lawfull thing, without any evill intent, happeneth to kill a man casually; by the Law of God there was a City of refuge appointed for such person to flie unto, *Numb. 35. 15. & 22. Josh. 20. 3.* for such an act happening in such sort, seemeth to bee the worke of God himself; see *Prov. 16. 33. & Exod. 21. 13.* And by our Law now, this is no felony of death, neither shall there bee any judgement of death given upon him; but hee shall have his Pardon of course for his life and his lands; yet hee shall forfeit his goods, in regard that a subject is killed by his means. See *Stamf. 16. a. b. Fitz. Coron. 69. 302. & 354. Br. Forf. 9. & Co. 5. 91. b.*

As if a Schoolemaster in reasonable manner beating his scholler, for correction onely; or a man correcting his child, or servant in reasonable manner; and the scholler, childe, or servant happen to die thereof, this is Homicide by misadventure. *Cro. 136.*

So if a man shooting at buts, prickes, or other lawfull marke, and by the shaking of his hand, or otherwise against his will; hee killeth one that standeth or passeth by, 21. *Hen. 7. 29. Rede 6. Ed. 4. 7. Br. Cor. 39. & 148.*

So if a Carpenter, Mason, or other person doth throw, or let fall a stone, tyle, or peece of timber from an house, or wood, or other thing from a care; &c. (and giveth warning thereof) and another is killed thereby against his will. 21. *H. 7. Br. Coron. 59.*

So if a labourer that is felling, or cropping of a tree, and the same, or part thereof, falleth and killeth a man;

So if the head of his hatcher, or other tooles falleth from him, and happeneth

happeneth to kill one standing by, *Dent. 19. 5.* accordeth.

So if a man bee (in due and convenient time) doing any other lawfull thing, that may breed danger to such as passe by, and shall give warning thereof, so that such as passe by, may heare and flye the perill, and yet another passing that way shall be killed therewith. 11. H. 7. 9. 10.
See Br. Cor. 1.
219. 2000.

And so if men shall run at Tilt, Just, or fight at Barriers together by the Kings commandement, and one of them doth kill another, in these former cases and the like, it is misadventure, and no felony of death.

And yet in such cases of Misadventure, as also where one killeth another *se defendendo*, by the Common Law these offences were felony of death, and the offender should have died for the same; but now by stat. such offenders are to have Pardon for their life & lands, yet their goods remaine forfeit as before (at the common law.) See the stat. 6. E. 1. c. 9. & 2. E. 3. c. 2. Co. 1. 61.

21. E. 3. fol. 17. Br. Co. 40. & for. 9. 13. 15.

Also in these cases of misadventure, and in the former cases of homicide committed by Infants, & other persons, being *Non compos mentis*, as also where one killeth another in defence of his person; they shall be discharged in this manner, *sc.* if they desire to purchase their pardon they must upon their triall, plead not guilty (and shall give in evidence the speciall matter) and then this speciall matter being found by verdict, they shall be bailed, and then they must sue forth a *Certiorari*, to have this record certified to the Lord Chancellour of England, who thereupon shall make them a Charter or Pardon of course under the great Scale, without speaking or suing to the K. for it. See *Stamf. 15. c.* Fitz. 346.
& 348.
Br. Cor. 1.
See Br.
6. H. 14.
4. H. 23. 3.
Reg. 149.

Unlawfull act.

But if a man bee doing of an unlawfull act, though without any evill intent, and hee happeneth by chance to kill a man, this is felony, *viz.* manslaughter at the least if not murder, in regard the thing hee was doing, was unlawfull. *Finch. fol. 75.* Stamf. 15. c.

As shooting of arrowes, or casting of stones into an high way, or other place, whither men doe usually resort. Stamf. 150.

So of fighting at Barriers, or running at Tilt or Justs, without the Kings commandement, whereby a man is slain: & although it were by the Kings commandement, yet it was holden felony by the Just. *tempore H. 8.* 11. H. 7.
Br. Cor. 439.

Playing at hand sword, bucklers, football, wrestling, & the like, whereby one of them receiveth a hurt, and dyeth thereof within a yeare and a day; in these cases, some are of opinion, that this is felony of death: some others are of opinion, that this is no felony of death, but that they shall have their pardon of course, as for misadventure, for that such their play was by consent, and againe there was no former intent to doe hurt, nor any former malice, but done onely for disport, and triall of manhood. 11. H. 7. 10.
(rom. 34. b.
& 28. a.
Cro. 118.
135.
P. R. 12.

A man casting a stone at a bird, or beast, and another man passing by, is slaine therewith, *quare* whether this be manslaughter, or but misadventure. The opinion of *Finew* chiefe Justice in 11. H. 7. fol. 23. is, that if a man cast a stone over a house, and killeth a man, this is no felony, but misadventure: But M. *Brooke* abridging this case, saith, it seemeth to bee no law, but where the casting of a stone is lawfull, as where a Mason is untyling of a house, &c. but to cast it for pleasure, and not in lawfull labour, seemeth to bee felony; and so was the opinion of M. *Bruton* and *M. Stam-* Fitz. Cor.
102 & 354.
See Nand.
75. 11.
Br. Cor. 137.
Cro. 108.
136.
Stamf. 150.
26. c.

M. Stam-

M. Stamford.

Casuall Death. CHAP. 97.

ALso a man may bee slaine by other casuality, than by the hands or meanes of another man; as by the fall of a house, pit, or tree, &c. upon him; or bee killed by a Bull, Beare, or other beast, or by a horse, or Cart, &c. or be killed by some fall, which he himselfe taketh.

And in these and the like cases, observe these rules

1 First if a man be slaine in any such manner, yet if it be by the meanes, or procurement, or wilfull default of another man, this shall bee felony in the party procuring or causing it.

2 The thing which is the cause of such casuall death shall bee forfeit to the King, taken for a *Deodand*, and distributed in almes by the Kings Almner for *Deodand*, *est quasi Deo dandum, id est, in Eleemosinas erogandum*. But the Almner hath no interest, as it seemeth, in such goods, but hath only the disposition of the Kings almes, *du ante bene placito*, so that the King may grant them to any other. See Co. 1. 50. Dyer 77.

The office and duty of this Almner. See Co. l. 94.

3 The forfeiture shall have relation from the stroke given; so as the party or owrier selling thereof (*sc.* of such thing as was cause of such death) after the stroke given, taketh not away the Kings right, but that he shall have it as forfeited, notwithstanding such sale.

4 *Deodands* are not forfeited untill the matter bee found of Record, and therefore they cannot bee claimed by prescription.

5 The Jury which find the death of the man, must also find and appraise the *Deodand*, and the sherife shall bee charged with the price of such *Deodand*, and shall levy the same of the towne where it falleth, although it were not committed to the towne to keepe: and therefore it behooveth the towne to see it forth comming. See the statute *de officio Coronatoris*, 4. Ed. 1.

6 If he that is so slain bee under 14 yeares of age, nothing shall be forfeit to the King as a *Deodand* for him, as it seemeth.

And if a man that is unknown be found dead in the field, his apparell & money about him shall be given to the poore; &c. And if he were known, then his goods shall be delivered to his Executors or Administrators, or to the Ordinary; but shall not bee taken as a *Deodand*, in either case (for they are not of the nature of a *Deodand*) they being no cause of his death.

Next what shall bee forfeited and taken for a *Deodand*; The old rule is, *Deodand, Omnia que movent ad voricem, sunt Deodanda*: And yet besides *Deodands* may be of some things that a man shal move or fall from, though the thing it selfe moves not: as to fall from a ship, cart, mow of corne or hay, &c. So as *Deodands* are any goods which do cause, or are occasion of the death of a man by misadventure. Co. l. 114. See more. *Fitz. Cor.* 314. 326. 341. 342. 348. 388. 389. 398. 401. 409.

If a man killeth another with my sword (or other weapon of mine) my weapon shall bee forfeit as a *Deodand*: for it shall bee adjudged my fault, that I did not keepe my weapon from him. *Doct. & St. fo.* 156. b.

If I shall lend another man my sword or other weapon, knowing him

him to bee minded to goe fight, or make an affray therewith, & hee with my weapon in such fight or affray, killeth one, *quare* if this bee not felonie in mee: for you shall find that an Abbot that lent a bow and arrowes to another, to the intent to kill the Kings Deere, was therefore fined and ranfomed: *Crompt. Author des Courts fol. 191.*

The inquiry of such casuall death, belongeth also to the Coroner: but if the Coroner cannot have the sight of the body, and so cannot inquire thereof, *quare* how the King shall bee intituled to the goods. *vide hic cap. 92. fine.*

Homicide upon necessity.

CHAP. 98.

Commanded. Sometime the Justice of law commandeth a man to bee put to death, As when the Judge hath pronounced sentence of death against an offender (attainted by due course of Law) there in execution of Justice) an officer, or other person thereto lawfully deputed, may orderly execute such judgement or sentence according to his Warrant; and such sentence or judgement pronounced by the Judge, and after lawfully executed by the officer, leaveth the name and nature of murder or homicide, and is called Justice, or rather Judgement, which is the lawfull execution of Justice.

But if the officer, or other person, shall proceed therein upon his own authority, without warrant, or *Non observato ordine juris*; as where an offender hath judgement given upon him, to bee hanged, if the sherife or other officer, &c. shall behead him, or by other meanes put him to death, this is felony in such officer, &c. *Co. 7. 14.*

Also if a stranger being not thereto lawfully deputed, shall (upon his owne authority) put to death an offender that is condemned to die, this is felony. See *Co. 7. 14. d.*

Nay if the Judge himselve, who gave the judgement of death upon an offender; shall after put the same offender to death, it is not justifiable by him.

If the Justices of peace shall arraigne a man of treason before them at their Sessions, who is found guilty, &c. and thereupon is hanged; this is felony as well in the Justices, as in the sherife or officer which shall hang him; for that the Justices of peace had no authoritie therein, but it was *coram non Iudice. Lecture M. Cocke. See also Co. 10. fol. 76.*

If the Justice of peace shall arraigne a man of felony, upon an Endictment of trespassse, whereupon hee is hanged, this is felony in the Justices, but not in the Sherife or Officer, *Lecture M. Cocke.* The difference between these two cases appeareth in my Lord *Cookes Reports, lib. 10. f. 76. sc.* for that in this last case the Justices of peace had jurisdiction of the cause, and therefore although they proceeded *inversordine*, or erroneously, yet the officer is excusable.

Tolerated. Sometimes also the Justice of Law, tolerateth and suffereth a man to be slain. *sc.* for the necessarie execution & advancement of Just. which otherwise should bee left undone: And in such case the law of the land imputeth not it as any fault to him that shall so kill a man, but freely dischargeth him thereof without the Kings pardon.

As a sherife, Baillife, or any other person who hath a lawfull Warrant

*F. Cor. 269.
Stam. 12.*

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to arrest a man indicted of felony, may well justifie the killing of him, if hee will not suffer himselfe to bee arrested, and yeeld himselfe, and that they cannot otherwise take him. See 22. Aff. 55. & Fit. Cor. 288. & 328.

Fit. Cor. 288.
22. Aff. 55.

And so every person whatsoever, without any warrant, may apprehend a felon upon huy and cry, or otherwise: and if hee will not yeeld to be arrested, but shall resist or flie, the pursuer may kill him without blame. See Fitz. Cor. 2. 328. & Co. 5. 109. b.

Herewith also agreeth the Doctor and Student, lib. 2. cap. 41. saying, If any person that is no officer, would arrest a man that is outlawed, abjured, or attainted of murder, or any other felony, and such offender shall disobey the arrest, and by reason of that disobedience hee is slaine, the other shall not bee impeached for his death; for it is lawfull unto every man to arrest, and take such persons, and to bring them forth, that they may bee ordered according to the law.

Fit. Cor. 288.
22. Aff. 55.

An offender in felony is led towards the Gaole, and breaketh away from those that conduct him, and maketh resistance, or flyeth; his conductors may justifiy to kil him, if they cannot otherwise take him again.

A prisoner in the Gaole attempteth to escape, and having broken his yrons, striketh the Gaoler (comming in the night to see his prisoners) & the Gaoler slayeth such a prisoner, this is no felony.

Fit. Cor. 288.
22. Aff. 55.

Rioters, and such as shall make any forcible entrie, or detainer, against the statutes, if they shall resist the Justices of peace or other the Kings officer, or shall not yeeld themselves, but shall stand at their defence, when the Justices of peace, or other officer shall come to arrest or remove them, if any of them happen to bee slaine, this is no felony in the Just. of peace, or officer, or in any of their company that killed such Rioters, &c. Lamb. 310.

Sam. pre-
15. 101. 46.
C. 44. 30.
D. 44. 30.
151 b.
Sam. 12. 13.
15.

The sherife, bailife, or other officer commeth (by vertue of the Kings proceffe) to arrest ano her for debt, or trespassse, who maketh resistance, and thereupon is slain by such officer, or any of his company, this hath beene taken to bee no felony, *tamen quere*, what the law is at this day; for although the Sherife (being the kings officer) ought to see the kings commandement to bee executed, yet that must bee understood to be executed by all lawfull meanes and wayes.

But in all these former cases there must be an inevitable necessity, sc. that the offender coul. not bee taken, &c. without killing of him.

Fit. H. 6. 27.

Also in an appeale of Felony, if the appellant and appellee doe joyne to try it by battell, and therein one doth kill the other; as the law doth allow such triall, so doth it allow the event to bee justifiable, as depending upon the Judgement of God, who giveth Victorie according to Truth.

So a man as a champion in triall upon a writ of right, if hee killeth the other, this is no felonie *Pl. 9. b.*

Also when one man killeth another in the necessary defence of himselfe, or his, thereby to deliver himselfe, his possessions, or his goods, or some other persons, which he is bound to defend from perill, & which cannot otherwise escape, this is Homicide tolerated upon necessity. As

se defen-
denda tole-
rated.

16. H. 8. c. 5.
P. Fort. 1.

To kill an offender, which shall attempt feloniously to murder or rob mee in my dwelling house, or in or neere any high-way, cart-way, horse-way, or foot-way, or that shall attempt burglary, or feloniously to breake

my

my dwelling house in the night, this is justifiable by my selfe, or by any of my servants, or company, whom the said evill doers shall so attempt to rob or murder; or by any person being in my dwelling house, which the same evill doers shall attempt so to breake by night.

And this being so found by verdict upon trial, wee shall bee all discharged without losse of life, lands, or goods, or pardon. 24.H.8. cap.5. *Stamf. de Prærog.* 46.

To kill a thiefe or murderer, (*sc.* one which goeth about to rob, or murder mee) in the defence of my person, my house, or goods, was no felony, but justifiable by the common law, before the statute of 24.H.8. c.5. (which statute doth also declare the Law to bee so, and doth enact it) *Stamf.* 14. See *Co.* 5.91. & 11.82. *Br. Coron.* 100.102. And yet at the Common Law there was this difference, *sc.* that hee which killed a thiefe which would have robbed him upon the high way, should forfeit his goods; but he which killed one who would have robbed or murdered him in his house, should forfeit nothing *Co.* 11.82. see *Exod. cap.* 22.2.3.

And if one, or moe come to burne my house, I, or any of my servants, may justifie to shoot forth of my house at them, or may issue forth, and to kill them, for such intent of theirs is felonious. *Br. Coron.* 100.

If a woman kill him that assaileth her to Ravish her, this is justifiable by the woman without any Pardon. *Sir Fr. Ba.* 34.

If divers bee in danger of drowning by the casting away of a boate or barge, & one of them gets to a plancke, or on the boates side, to keepe himselfe above the water, and another to save his life thrust him from it, whereby hee is drowned, this is neither *se defendo*, nor by misadventure, yet justifiable. *Idem* 30.

Prohibited. But if a man shall forcibly get, and keepe possession of a house, & the other shall come in the night and fire this house, they within cannot justifie to shoot and kill him, or any of his company, for that they in the house were there unlawfully. See *Cromp.* 26.6.

If one commeth (in the day time) to my house, to beat mee, and doth make an assault upon mee in my house, and fighteth with mee, and I kill him in defence of my person, yet in this case I shall forfeit my goods, and must have the kings pardon, except it bee found, that the assailant came with a felonious intent to kill or rob me.

And if one commeth (in the day time, or in the night) to enter into my house, pretending title thereto, and to put mee out of my possession, and I kill him, this seemeth to be manslaughter in me.

Note if one kill a true man, in defence of his person, there ought to be so great a necessity, that it must bee esteemed to bee inevitable, or otherwise it will not excuse, but it is felony although that the other pursues him: and therefore hee that shall bee assaulted by a true man, must first flie as farre as hee can, and till hee bee letted by some wall, hedge, ditch, presse of people, or other impediment; so as hee can flie no further without danger of his life, or of being wounded or maimed: and yet in such a case if hee kill the other, hee shall bee committed till the time of his trial, and must then get his pardon for his life and his lands, (which pardon notwithstanding he shall have of course) but he shall lose & forfeit his goods & chattels, for the great regard which the Law hath of a mans life.

*The penal-
tie.*

Fitz.

Fitz. Coron. 116. Co. 5. 91. b. See hereof *paulo antea tit. Felony by Misadventure.*

Co. 5. 91. b. *4 H. 7. 27.* *4 E. 1. c. 9.* *P. Parson. 1.* *Stamf. 15.* *St. 11. 7. 39.*
A. maketh an affray upon *B.* and striketh *B.* and *B.* flyeth so far as hee can for saving his life, before any stroke given by *B.* and *A.* continueth his assault, whereupon *B.* doth also strike *A.* and killeth him, this is Homicide in his owne defence: otherwise it seemeth to some, if *B.* had stroken the first blow, or had stroken before hee had fled: and yet by other good opinions the first stroke, or who began the affray, is not materiall, but the whole matter will consist upon the inevitable necessity (*sc.* whether the said *B.* who killeth *A.* could not have escaped with his life, &c. without killing *A.*) for otherwise it will not excuse *B.* for *cuncta primum tentanda*; and as it is a charitable, so it is a safe principle (in these cases) not to use an extremity, till thou hast tried all meanes.

P. Cor. 184. *2 H. 6.* *Stamf. 15.*
 Also it is holden in the former case, if *B.* (before hee had fled) had striken *A.* and given him divers wounds, that yet if hee flie to a streight before hee give *A.* the mortall wound, and then hee giveth his deaths wound, this is homicide in his owne defence.

P. Cor. 187. *Crompt. 22.* *2 H. 6.*
 But in the former case, if *B.* upon malice prepened had first stroken *A.* and then *B.* flieth to a streight or wall, and *A.* pursueth him, and striketh him, and *B.* killeth *A.* thereupon, this is murder in *B.* for the malice prepened was the ground and beginner hereof.

Yet if there had beene former malice betweene *A.* and *B.* and they meet suddenly, and *A.* assaulteth *B.* and *B.* before any stroke by him given flyeth so far as he can. & *A.* pursueth him, & then *B.* killeth *A.* this seemeth to be homicide in his own defence notwithstanding the former malice.

11. H. 7. *Crompt. 27.*
Copstones case: There was malice betweene *Copstone* and one *S.* and they had fought divers times, and after met suddenly in London street, and *C.* told *S.* that hee would fight with him, and *S.* answered that hee had nothing to say unto him, and *S.* went to the wall, and after *C.* assaulted *S.* and then *S.* stroke and killed *C.* and it was found that *C.* began the affray, and *S.* was thereupon discharged without forfeiting any thing: But that was by force of the statute 24. *H. 8. ca. 5.*

A man in fight falleth to the ground, there his flying, &c. is not necessary &c. see hereof before.

Stamf. 14. *Co. 5. 98.*
 Also if a thiefe assaults to rob or kill mee, I am not bound to flie to a wall, &c. as I must in case a true man assaults me.

If an Officer of Justice, or Minister of the Law, in the execution of his office, be assaulted, he is not bound to flie to a wal, &c. as other subjects are.

21. H. 7. 39.
 Also the servant may justifie the killing of another, in defence of his masters person or house, if the hurt cannot be otherwise avoyded. *Br. Coron. 63.*

Also the servant may justifie the killing of him, who robbed & killed his master, so that it bee done presently.

In the defence of the possession of my goods, I may justifie to beat him that shall wrongfully take them from me; but I cannot justifie to kill him, except hee bee a thiefe.

21. Ed. 1. *P. Forests 4.* *Stamf. 13. 14.*
 So then to kil a true man in defence of my person, in case where there is an inevitable necessity, (*sc.* that I first shal flie so far as I can for saving my life, &c.) this is no felony of death &c. But otherwise it is to kill a true man in defence of my house, lands, or goods, that is manslaughter (at least) as it seemeth

If any forrester, park-keeper, or warrener, or any in their company, shall

'shall kill an offender in their Forrest, Parke, or Warren, which (after huy and cry levied to keepe the peace, and to obey the law) will not yeeld themselves, but will flie, or defend themselves by violence, this is no felony : Yet *quare*; if there were any former malice in such Keeper. But if any such Keeper by reason of any former malice, will lay to any mans charge, that hee came to doe hurt, whereas he did not, neither was found wandring nor offending, and so kill him, this is felony in such keeper.

And so in the former cases where a man is slaine for the execution of Justice, *sc.* where the offender shall disobey the arrest, resisteth, or flieth, and so is slaine : as also where any man shall bee slaine by an officer, or other person, in keeping or preserving the peace; yet if such Manslaughter, or killing of such an offender bee committed wittingly, willingly, & of purpose, under colour of execution of Justice, or keeping of the peace, this is felony. See the stat. 1. *Jac. Regis, cap. 8.*

Burglary. CHAP. 99.

Burglary in the naturall signification, is nothing but the robbing of a house; but in our Law it is taken to bee when one or moe in the night time, doe breake a dwelling house, or a Church, or the wals or gates of a City, or walled Towne, with an intent to rob, or to doe any other felony, although hee or they take or carry away nothing, yet it is felony of death, and the offenders shall not have the benefit of their Clergy. *Dyer 99. Stamf. 30. Fitz. Coram. 185. 264.*

The times.

First for the time : Burglary cannot bee committed in the day time, but onely in the night, for all indictments of Burglary, bee, *Quod nocturno fregit*; And the night (to this purpose) beginneth at the sun-setting, & continueth to the sun-rising : And therefore to break a house, &c. after the sun-setting, and before it bee darke; or after day light in Sommer, and before the sun riseth, is Burglary.

The manner.

Next, for the manner : It is holden (by some good opinions) that if a man break the house to do felony, and yet entreth not, it is no burglary; & that the Indictment must bee *fregit & intravit*. And yet by the opinion of *Shard, 27. ass. 38.* and by the opinions of *sr Anth. Browne*, *sr Edward Montague*, & *sr Rob. Brooke*, late chiefe Justices of the Common pleas, and others, (as *M. Crompton* reporteth) if a man doe but attempt or enterprife to break or enter into a dwelling house by night, to the intent to rob, or kill any person there, though he make no actuall entry, yet it is a full and compleat Burglary : for in such cases, *Voluntas reputabitur pro facto*.

As to put backe the leafe of a window with his dagger.

To draw the latch of the doore.

To turne but the key, being on the inner side of the doore.

So to breake the glasse window, and to draw out any goods there with a hooke, &c. *26. El. at Staff. Assises.*

So to breake a hole in the wall, and to shoot in thereby at any within the house.

So (the doore being opened by some of the house) if any the attempters shall discharge a dagge against any in the house, and in discharging his

his dagge shall hold his hand over the threshold, though he set no foote over.

So if upon an attempt of Burglary, they within the house shall cast out their money for feare, and the attempters take it away.

And yet there is no actual entry made, in any of these cases.

But if a thiefe setteth but his foot over the threshold, or into any part of the house to commit felony, or shall for that purpose but put his hand in at the window, or at any hole in the wall, this much more shall convict him of burglary.

Comp. 32. Also one being let downe the chimney in the night to commit felonie, it was adjudged Burglarie by *sir R. Manwood*, chiefe baron, and yet he broke not the house.

So it is to come into the house by the helpe of a key.

So if suddenly one come into the house by night, the doores being open, & the owner flieth to his chamber, and the offender is taken shoving at the chamber doore.

So is it if theeves pretending that they be robbed, &c. shall come to the Constable, and pray him to make search for the felons, and going with the Constable into a mans house to search they robbe the good man of the house, this is burglary.

11 H. 7. 14. So if a servant conspiring with another to robbe his master, shall open his masters doore or window in the night, and the other entereth thereat, this is burglary in the stranger, by the opinion of *Sir Roger Manwood*: And the servant is but a thiefe and no burglar.

And yet the house was not broken in any of these cases.

If a thiefe finde the doore open, & commeth in by Night and robs the house, & bee taken with the manner, and breaks a doore to escape, this is Burglary; yet the breaking of the doore was without any felonious intent; But it is one entire act. *Sir Fr. Ba. 65.*

11 H. 4. 13. But if one commeth into my house in the day, and there hideth himselfe till night, and then robbeth me, or if I shall lodge one in my house, and in the night hee robbeth me; (*sc.* goeth out of my house, and taketh away some of my goods with him,) yet this is no burglarie, for that hee broke not my house: for the first case it was so holden at Derby. *Aff. 32. El. Comp. 34.* See *hic postea*. *Quare* of his opening the doore to goe out & escape if that shall not make it Burglary.

Also if divers come to commit burglary, and but one of them entereth and commit it, the rest standing about the house, or not far off, to watch that no helpe shall come; this is burglary in all that company.

But Master *Finch* (*lib. 2.*) describeth burglary to be the breaking and entry of a house in the night, with a felonious intent to kill, or steale, although no man be killed, nor any thing stolne.

Now concerning the place, it may be either publique, or private; publique as the Church, or walls, or gates of a city, or walled towne; private, as a dwelling house: and here commonly it is no burglary, unlesse some person be at that time within the house.

And yet *an. 36. El. termino Pasch.* at an assemblie of all the Justices at Serjeants Inne; it was resolved, that the breaking of a house in the night, with an intent to commit felonie, is Burglarie, although that no

person bee within the house; for the law is, that every man ought to bee in securitie or safety in the night; as well for their goods, as for their person; and that the ancient presidents are, *Quod domum noctanter felonice et burg. fregit*, without saying *domum mansionale*, or that any person was in the house; and that the reason why of late times these words have beene put into the indictment (*scz.* that some person was in the house) was, for that in such cases the benefit of Clergy was taken away: but now by the statute 18. *Eliz. cap. 6.* Clergy is taken away in all cases of burglary; and therefore the Judges then all agreed from thenceforth to put the same in execution accordingly. I have seen this thus reported out of a booke of *Pophams*, late Lord chiefe Justice of the Kings Bench.

And if a man hath a dwelling house, and hee and all his family (upon some occasion) are part of the night out of the house, and in the meane time one commeth and breaketh the house to commit felonie, this is burglary. Co. 4. 10.

So if a man hath two dwelling houses, & sometimes dwelleth at the one, and sometimes at the other, and hath a family or servants in both, and in the night when his servants are out of the house, the house is broken by theeves, this is Burglary. Adjudged 38. *Eliz.* Co. 4. 41.

I have also seene a report of Judge *Pophams*, that *termino trinit. 36. Eliz.* it was resolved by the Judges, That if a man had two houses, and dwelt sometimes in the one, and sometimes in the other, if that house wherein hee neither then was, nor had any servants, were broken &c. that this was Burglary, although no person then dwelt or were therein.

If one breaketh a Chamber in Lincolnes Inne, (or in any other house of Court, or Chancerie, or in any Colledge in Cambridge, or Oxford, &c.) in the night, to the intent to commit felony there, this is Burglarie, although there were no person in the same Chamber; for that Colledges and houses of Court and Chancery bee entire houses, whereof such Chamber is parcell; so that if any person shall bee in any other Chamber within the same House or Colledge at the same time, it is Burglary. Co. 7. 31.

One P. was arraigned of Burglary, *An. 22. Eliz.* for that hee assaulted one of his companions of the Inner Temple, London, in his Chamber there to have killed him in the evening, &c. but had his pardon. Co. 7. 31.

A servant who lyeth continually within his masters house, openeth the doores of his masters house in the night to rob him, this is burglary, *Leif. Mr. Cock, tempore H. 8.* See *hic antea.*

A man commeth as a guest to eat or drinke in the day time, and there stayeth till night, and in the night time breaketh his chamber or any part of the house to rob his host, this is burglary. *Ibid.*

A guest commeth to a common Inne, &c. & the host appointeth him his chamber, and in the night the host breaketh into his guests chamber to rob him, this is burglary. *Ibid.*

Also the breaking (in the night) of a stable, barne, or other out house adjoining to, or parcell of, or neere to the dwelling house, to the intent to steale, is burglary, though he take nothing. *Fi. libro. 2.* 3. Ed. 6.
Br. Co. 130.
Lamb. 346.

At Sommer Assises at Cambridge, *anno Dom. 1616.* two men were arraigned and condemned for burglary before Sir *James Altham*, knight for

for robbing a backhouse of *Robert Castle Esquire*, in the night, which backhouse was some 8 or 9 yards distant from his dwelling house, and only a pale reaching between them: so that though this offence bee not committed in the very body of the dwelling house, but in some other house neere unto it, and being parcell of or belonging to the dwelling house, it is burglary.

But a booth or tent in a Faire or Market, are not esteemed in law for a dwelling house, nor the breaking thereof in the night time to bee burglary; although the robbing of them bee made as penall as burglary, if the owner, his wife, children, or servants, were within the same.

The intent.

Lastly (to make it Burglary) the purpose and intent for which the offender cometh, must of necessitie bee, to kill, or rob some person, (or to commit some other felonie) otherwise it is neither burglary nor felonie.

And therefore to breake a house in the night, to the intent to kill any person therein, it is burglary, although he never touch him.

So it is, if the purpose were to rob, although the offender taketh away nothing.

But if a man breake and enter an house by night, of purpose only to beat a man, that is but trespassse. *Abr. d' Ass. 75.*

And if the intent were to commit a Rape, which some thinke to be no felony by the common law, but only a trespassse, then there is some doubt, saith *M. Lambert*: And *M. Crompton* saith, that if a man breaketh another mans house in the night, and ravisheth a woman there, this is no burglary; for, saith hee, ravishment is no felony by the common law, as burglary is, although it bee felony at this day by the statute: But it may seeme by *M. Bracton*, *Glanvill*, and *Stamford*, that by the ancient common law it was felony. The words of *M. Bracton lib. 2.* are thus, *Olim quidem corruptores virginis & castitatis suspendebantur, &c. modernis tamen temporibus aliter observatur, quia pro corruptione virginis amittuntur membra, &c.* And a little after, *Adelstanus; raptus mulierum ne fiat, defendit tam lex humana quam divina: Et sic fuit antiquitus observatum, quod si quis obviaverit solam, cum pace dimittat eam, &c. Si autem contravoluntatem suam, &c. iussit eam ad terram, foris facit gratiam suam, &c. Quod si concubuerit cum ea de vita & membris suis incurrat damnum &c.* And with this *M. Glanvil* also agreeth, fol. 112. & *Co. L. Sec. 190.* Note that the words, *de vita et membris suis incurrat damnum*, doe imply the offence to have been felony of death. *Br. Cor. 204. Vide Co. L. 391.*

Also amongst the laws of *S. Edmond*, sometimes king of this Realme you shall find this law, *Qui cum Nuna vel sanctimoniali fornicetur, emendetur sicut homicidia; A multo fortiori*, then saith *M. Stamford*, shall hee bee punished, if hee had ravished her. So as Rape, at the first, saith *Stamford*, was grievously punished, untill the time of King *Ed. the first*, who seemed to mitigate the paine thereof by the stat. of Westminster, 1. ca. 13. which gave two yeares imprisonment and fine: but spying the mischiefs ensuing upon the said Law, at his next Parliament holden at Westminster, called *Westm. 2. cap. 34.* hee made the offence of Rape to bee felony againe. *Br. Coron. 204.*

Note also by *Britton*, fo. 17. it is not Burglary in an infant under 14 yeares of age, nor in poore persons that upon hunger shall enter a house

for victuall under the value of twelve pence, nor in naturall fooles, or other persons that be *Non compos mentis*; but for poore entring for victuall, at this day it is felony in them.

Vac. si pur conservation de vie, home emble viands de satisfe son present hunger, ceo nest felony, nec Larceny. Car Neceffitas inducit privilegium quoad jura privata. Stamf. Sr. Fr. Ba. 29.

And as for Infants, See *hic cap. 95, & 104.*

Theft. CHAP. 100.

THeft is the fraudulent taking away of another mans goods, with an intent to steale them, against (or without) the will of him whose goods they be: And this is of two sorts, Robbery, and Larceny.

Robberie.

Robberie (in Latin called *Rapina*) is properly the felonious taking of any thing from the person of another, against his will, by assault in the high way, and putting him in feare thereby: & here although the thing taken, be but to the value of a halfe peny, yet it is felony, for which the offender shall suffer death, without benefit of Clergy.

As if one by the high way assaulteth mee, and taketh away my purse, mony, or other goods.

But if a thiefe assaulteth mee to rob mee, and biddeth mee deliver my purse, but taketh nothing from mee (in regard that I being too good for him, shall apprehend him, or shall levy huy and cry, whereby hee is taken) this is taken to be no robbery nor felony at this day: for although intent may make a man guilty of Treason (as you may see here before, title *Treason*;) yet in case of felonie there must bee an execution of that which was formerly intended, and resolved to bee done, viz. to kill the party, or to steale or take away the thing, &c. And therefore in *M. Pl. fol. 259.b. walthe* (Serjeant) saith, *Que intent de faire tort, sans le act fait, nest punissable en nre Ley, Nec le Resolution, &c. meuz le fesauns del act est le sole point que nostre Ley respect.*

And yet the assault (yea to lie in wait) only to rob mee, hath bin in former times holden to be felony, as appeareth by the bookes *27. Aff. p. 38. & 13. H. 4. 7. 25. E. 3. 42. Fit. Cor. 132. & 267. Br. Coron. 106. 215.*

And so the intent to commit burglary (or murder) hath bin holden to be felonie; for the will was reputed for the deed. *Vi. 27. Aff. 38. Fit. Cor. 383. & Stamf. fol. 17.a.* but the law is otherwise at this day.

In this former description of robbery, the word (taking) is largely to be extended against the offender; so that although the thiefe taketh nothing from my person, yet if he assaulteth mee, and upon his assault hee threatneth to kill me, if I deliver him not my purse, and thereupon I cast my purse downe, and he taketh it away, this is robbery.

So if one draweth his sword upon me, & biddeth me deliver my purse, and I refuse, & after he prayeth me to give him a peny, & I doe so: yet it seemeth this is robbery; for by the assault I was put in feare, and out of that feare I gave him this mony to be rid of him.

So

comp 34. So if a thiefe doe only assault me to rob me, & I deliver him my purse with mine owne hand, yet this is robbery, in regard this fact of mine proceeded from feare, or by his menacing, &c.

comp 35. So in flying from the thiefe, I cast my purse into a bush, to save it, and the thiefe seeth mee, & taketh it away, this is robbery; for in this case had they not put mee in feare, I should not have cast my money from me.

comp 36. So if one assaults me to robbe me, & I flying away from him, my hat falleth off, & the thiefe taketh it up, and carrieth it away, this is robbery.

comp 37. So if a thiefe comes and biddeth mee deliver my purse (without drawing any weapon, or other force used) and deliver him my purse, and hee finding but two shillings therein, delivereth it mee all againe, yet this is robbery.

comp 38. So if thieves doe take a man, and by threats compell him to sweare to bring them mony to such a place, (at another time) or else that they will kill him, by force whereof hee bringeth them the mony accordingly, this is Robbery. *Term. Pasch. 36. El.* it was adjudged accordingly.

comp 39. One came to a Fisherman going in the high way to market with Fish to sell, and desired to buy some fish of him; and hee refused; whereupon the other tooke away some of the Fishermans fishes against his will, and gave him more money for them than they were worth, but the Fisherman was thereby put in feare, whereupon the other was indicted, and arraigned at Yorke about 26. *El.* but judgement was respited, for that the Court doubted whether it were felony or no.

comp 40. Also in the former description of robberie, the words, from the person, are not so nicely to bee construed, (that to make up robbery) the goods must needs bee annexed to the body of the person; for in some cases it may bee robbery, notwithstanding the thiefe doth neither take the goods from the person of the owner, nor yet assault him.

comp 41. As if in my presence a felon taketh away my goods openly against my will, this is robbery, though hee neither taketh them from my person, nor assaulteth mee; for the losse is the same, and the feare alike as though it had been from my person.

comp 42. And if one or more doe take a horse out of my pasture, or drive my cattell out of my ground, I standing by, and looking on at the same time, this is robbery, if so bee that the felon doth either make an assault upon me, or doe put me in feare.

comp 43. Note to make it robbery, the person must be put in feare; for if a felon doe take money from mee in the high way, and shall not put mee in feare, this is no robbery. *Lam. 266. Grom. 35. P.R. 131.*

comp 44. And you shall find a case in my Lord Dyer, how a felon did take monie to the value of 40.s. or above, from the person of another in the high-way, and yet for that hee did not put his person in feare, by assault and violence, this was holden no robbery, and the offender was allowed his Clergy for the same felony, *anno 5. El. Finch libro 2.*

comp 45. Note also, if two thieves shall attempt to rob mee, and I flee from them, and one of the thieves follow mee, and the other espying another true man (but out of the sight of his fellow) rides towards him, and robbed him, this was adjudged robbery in both the thieves; and yet the

the one was neither in sight, or knowing of this robbery; but because they both came to rob, and at the same time, this fact committed by the one shall bee imputed to the other also: it was one *Pudsey* case. 28. *El.*

cut-purse. If one shall cut my purse, or take or picke my purse out of my pocket secretly, or privily and fraudulently, it is felony of death without benefit of Clergie, if it bee above (or to) the value of xij. d. *Quere* if it bee under xij. d. because it is taken from the person of a man, and the forme of the Indictments are *insultum fecit* 8. *Eliz. c. 4.* Also the words of the statute (8. *Eliz.*) are, That no person taking any money; or goods (generally) from the person of another, &c. shall have his Clergie: and yet by the opinions of M. *Lamb.* and M. *Crompt.* this is no felony of death, but petty Larceny, for which the offender is not to have Judgement of death, and therefore needeth not his Clergie.

So if one shall take any money or other goods from my person, secretly without my knowledge, or by sleight only, I neither being made afraid, nor witting of it (if it be above (or to) xij. d. in value) it is felony of death.

A man cutteth my girdle privily, my purse hanging thereat, and the purse and girdle falleth to the ground, but hee did not take them up (for that hee was espied,) this is no felony; for that the Thiefe never had an actuall possession thereof, severed from my person: But if hee had holden the purse in his hand, and then cut the girdle (although it had fallen to the ground, and that he tooke it up no more) then had it been felony (if there had been above (or but) xij. d. in the purse) for he had it once in his possession: But these secret and privie takings from my person, are no robbery, for he neither assaulted me, nor put me in any feare. *Dyer. 224.*

And in ancient time the offender only lost his right thumb. See *Fitz. Cor. 434.*

Larcenie. CHAP. 101.

L Arceny (being fetched from the Latine word *Latrocinium*) is properly a fraudulent and felonious taking away of another mans personall goods in the absence of the owner, and without his knowledge.

M. *Finch* (*tit. Felonies*) saith, that Larceny is the secret taking of the goods of another, above the value of xij. d. without petence of title.

This is of two sorts, *Grand Larceny*, and *Petty Larceny*.

Grand Larceny. Grand Larceny, is when the goods stolne bee above the value of xij. d. and this is felony of death, *sc.* wherein Judgement of death shall be given upon the offender, except hee be saved by his booke.

And yet if the goods stolne bee to the value of x. s. if the Jury that passeth upon his arraignment, shall find that the goods did not exceed the value of twelve pence, then that offence shall bee taken but for petty Larceny.

Petty Larceny. Petty Larceny, is when the goods stolne doe not exceed the value of xij. d. and for this the offender shall bee imprisoned for some certaine time, and after shall be whipped, or otherwise punished by the discretion of the Justices before whom he is arraigned; but it is not felony of death. And yet by good opinions, the stealing of goods to the value one-ly of twelve pence, is felony of death. See *Fitz. Coron. 178.* & *Br. Coron. 84, 85.* & *forf. 1. Doct. & Stud. 17.* And so Sir Robert Heath delivered it at Cambridge

bridge Assises 1631.

Yet may not the Justice of peace, before whom such an offender shall be brought (out of the Sessions) punish by his discretion the said offender for petty Larceny, and so let him goe, but must commit him to prison, or baile him, to the intent hee may come to his triall, as in case of other felonies; and if upon his triall the Jury shall find the goods stollen, to exceed or to be but xij. d. in value, the offender shall have Judgement to dye for the fault.

But if the indictment bee layed xx. d. and the offender arraigned thereof, yet upon his triall if the Jury shall find the goods to bee but of the value of x. d. here the offender shall have judgement but as for petty Larceny. 41. E. 3. *Abr. d. Aff.* 70.

Also, although petty Larceny be not felony of death, nor punishable by death, yet it is a felonious act & a felonious taking; for the indictment of petty Larceny must bee *Felonice cepit*: and hee shall forfeit all his goods and chattels for such a felony: and there is no difference either in the nature of the offence, or in the mind of the offender, but onely in the value of the thing stolne, which also maketh the difference of punishment.

And yet by some late opinions, petty Larceny is but in the nature of a trespassse; & then, where the Principall is convicted but of petty Larceny, there can bee no Accessories; and the procurers, or receivers knowing of the goods to bee stollen, are not to bee dealt withall as for felony; But to be sent to the house of Correction, or to receive some other punishment by the discretion of the Justices at the Quarter Sessions. *Quare inde.*

If one shall steale goods to the value of 4. d. at one time, and 6. d. at another time, and of 3. d. at another time, which together doe exceede the value of 12. d. and that these severall goods bee all stolne from one and the same person, then may they bee put together in one Indictment, and the offender being thereupon arraigned & found guilty, shall have judgement of death therefore.

Again if two, or more together doe steale goods above the value of twelve pence, this is felony of death in them all; for the felony in them is severall, though the stealing be joyntly done.

Now first for the manner. CHAP. 102.

IN Larceny, two things must concur, *sc.* to take, and to carry away, or to remove the thing taken with a purpose to steale the same; for the Indictment must bee, *Cepit & asportavit*, or *cepit & abduxit*; and yet in these words, the letter is not so much to be insisted upon, as the meaning, and that for the better suppressing of offenders in this kinde.

For although by the Law in M. Glauvils time *a furto omnimodo excusatur qui initium habuerit sue detentionis per dominum illius rei*; yet at this day it may be felony, though the offender take not the thing, but comes first unto it by delivery from the owners owne hand, and so commeth lawfully to the possession: *Delivery.*

As,

If a Taverner doe set a peece of plate before his guest to drinke in, and

and the guest carrieth it away, this is felony; for the Taverner gave him no possession thereof, but onely the use to drinke in it for the time.

If I deliver goods to a Carrier (or other person) and bargain with him to carry them to a certaine place appointed, if hee carrieth them to the place, and then conveyeth them away fraudulently, this is felony; for the privity of bailement was determined when they came at the place appointed. *Ibid.*

So if the Carrier shall take out parcell of the goods, this is felony. *Ibidem.*

Also if the Carrier shall carry them to another place, and there breaketh them up, and converteth part, or all, to his owne use, this is felony. *Ibid.*

But if the Carrier shall sell, or give away, or otherwise imbecill the whole as hee received them, this is holden to bee no felony, because it was delivered him. *Stamf. 25. a. Crom. 36. a.*

And yet in this last case there is besides the delivery, a bargain and agreement to carry the goods, and the delivery was only to that intent, so that the property of those goods did alwayes remaine in the first owner. *Ideo quere.*

But if *A.* lendeth his horse to *B.* being a stranger, who rideth quite away with the horse, this is no felony in *B.* by reason of the delivery. And so did Sir *John Dodderidge* Knight, give direction at Cambridge Assises 1617. upon an indictment of felony preferred in such a case; *quare* if the horse had beene delivered to a servant, who rideth away therewith. *Vide postea sub hoc tit.*

If a Clothier shall deliver any wooll or yarne to his Carder, Spinster, or Weaver, &c. to dresse, and they shall convey away, imbecill, or sell any part thereof, this seemeth to bee no felony, by reason of the delivery, but they shall bee punished by the discretion of two Justices of peace, by whipping, or stocking, &c. *Vide antea tit Cloth.*

So if I deliver my goods to another to keepe, and hee fraudulently consumeth them, or otherwise converteth them to his owne profit, this is no felony, because of the delivery.

And so (it seemeth) if I deliver money or goods to *A.* to deliver to *B.* and *A.* flyeth away with them, consumeth them, or converteth them to his owne use, this is no felony, by reason of the delivery.

SERVANTS. If a man delivers money to his servant to keepe, or plate to his butler, or vessell to his Cooke, or horse to his Horse-keeper, or sheepe to his shepheard, and such servant doth goe away with them, this is felony by the common law in that servant, (for these goods were alwayes in the masters possession, and kept and used by the servant to the masters behoofe.) But yet there was much difference of opinions herein; for the clearing whereof in some part, the statute 21. H. 8. cap. 7. (which was made perpetuall by the statute 5. El. c. 10.) provided, that all and singular servants of the age of 18 years, other than an apprentice, (which must bee understood of such as bee bound by Indenture, and by the name of an Apprentice) to whom any money, goods, or chattels, &c. by his or their master or mistresse shall bee delivered to keepe, of the value of

Apprentices
& servants
under 18
years shall be
in case as
they were
before the
making of
this Statute.

21. H. 8. cap. 7.
13. E. 4. c. 6.
3. H. 7. c. 10.
21. H. 7. c. 10.

21. H. 8. c. 7.
p. Folio. 10.

Crom. 99

xl.s.

xl.s. or above, if such servant shall goe away with, or shall imbecill, or shall convert to his owne use, any such mony, goods, or chattels of the said value, to the intent to steale the same, or to defraud his master, or mistress thereof, it shall bee felonie: but this must be prosecuted within one yeare after the offence.

And now upon the construction of this statute of 21. Hen. 8. divers new questions and cases have since arose:

As,

Dyn.

If a man deliver an obligation to his servant, to goe and receive the money thereupon due, & the servant receiveth the money, and then goeth away therewith, or doth convert it to his owne use, this is holden to bee no felonie within the meaning of this statute, for the master did not deliver the money to his servant.

Nil.

Dyn.

So if a man delivers to his servant wares or cattel to sell at a Faire or Market, and hee selleth them there, and receiveth the money; & then goeth away with the money, or converteth it to his owne use, this is no felonie within this statute, for hee had not the money by his masters deliverie; neither went hee away with the goods of his master delivered him.

Nil.
Comp. 15.

But if the servant received of his master 20. li. in gold to keep, which he changed into silver, and then ran away with that, this is felonie, for that gold and silver are both of the same nature, &c. money.

Nil.
Comp. 15.

And if a man delivers to his servant a horse to ride to market, or money to carrie to a faire, or to buy cattel, or other things; or to pay to another man, & the servant goeth away therewith, this was no felony by the common law, by reason of the delivery thereof to him by his master: but *quere* if it bee not felony by this Statute, for that hee went away with the thing delivered him.

If the goods delivered to the servant to keepe, bee under the value of fortie shillings, and the servant goeth away therewith, this is holden to bee no felonie at this day (*mez. tantum un breach del trust que la Mr. repose in son servant.*) But if the servant shall imbecill, or goe away with any goods of his masters, which were not delivered to him, this is felonie, although they bee under the value of fortie shillings, &c.

13.

If a man appoints his servant to take & carrie Corne to market, and to take his horse to carrie the same upon, and the servant goeth away with the Corne, or horse, this is felonie in the servant, if the goods bee so goeth away with be all to the value of fortie shillings.

But if the servant wastfully consumeth the goods and returneth againe to his master, this is no felony. And these were the directions of Sir Nicholas Hyde to a Jurie of Life and death, upon the arraignment of a servant in such a case, at Cambridge Lent Assises, *Anno. 2. Caroli Regis.*

Dyn.

And if one of my servants doth deliver to another of my servants goods of mine (to the value of xl.s.) and hee doth goe away therewith, or converteth them to his owne use, this is felony within this statute, for this shall be said my delivery.

Nil.
Comp. 15.
Nil.
Comp. 15.

If a man delivers to his servant a peece of cloth to keepe, and the servant maketh himselfe a garment thereof, and after goeth away there-
with

with; this is felony (within this statute) for that the property is not altered by the making a garment thereof, because the cloth may bee knowne still. Otherwise is it of barley turned into malt, or of money melted and turned into a wedge or peece of mettall, or the like, for that in these cases the barley, or money cannot bee knowne againe, but are altered in their nature and kind: but *quare*, and see the words of the statute.

If a man delivers goods to one to keepe, and after reteynes the same person into his service, who after goeth away with those goods, this is no felony by the stat. of 21. H. 8. because hee was no servant at the time the goods were delivered to him. *Vide Sir Fr. Ba. 39. 40.*

If I deliver goods to the servant of A. to keepe, and after I dye, and make A. mine Executor, and before any new commandement of A. to his servant for the custody of the same goods, his servant goeth away with them, this is out of the stat. of 21. H. 8. *ibid.*

If my receiver of my rents receive x.li. of my Tenants, and run away therewith, it is no felony; for the statute is where the master delivereth to keepe, &c. Crump.

If a man delivers to his servant the key of the chamber doore, and the servant taketh away his masters goods in the chamber (above the value of xij d.) this is felony at the common law, for the goods were not delivered. 11. 2. 44.

A man laid and hid a purse of money in his corne mow within his barne, and after his servant finding the same, tooke part of the money out of the purse, &c. and the servant was therefore indicted and arraigned of felonie at Cambridge Sommer Assises, *An. Dom. 1621.* before Sir *Joh. Dodderidge.*

If an Apprenrice, or servant under the age of 18. yeares, shall imbeasill their masters goods, which were not delivered to them, nor committed to their charge, if the goods so imbeasilled be to the value of xij. d. or above, it is felony. But if the goods bee under that value, it seemes such Apprenrice, or servant, may bee sent to the house of Correction. *Vide hic cap. 31.*

Another felony there is by the Statute 33. H. 6. cap. 1. in the Servant that shall take away or spoile the goods of their deceased master: but this felony groweth upon their default of apparance in the Kings Bench, after Proclamation; and therefore neither the triall nor hearing thereof belongeth to the Justices of peace, because they cannot well take knowledge of such default in the Kings Bence. P. Felon 11.
P. Razo 11.

The second thing which must concur (in Larceny) to make it felony, is the carrying away of the thing so taken; and yet it is not of necessitie that it bee cleane carried out of the house, or place where it was, but it sufficeth that it bee so far removed, that the evill and felonious intent of the taker may plainly appeare; As,

If a guest will feloniously take the sheeres, or other goods of the In-keepers, out of the chamber where he lodgeth, and then (going to the stable for his horse) is taken with them, or they bee found in some other roome of the house where hee had laid them; it is felony in both cases, although By Act 19.
See Sec 1.
24. b.
Br. Cor. 17.

although the possession of those goods continued in the owner.

So is it if one taketh a horse in another mans Close, with an intent to steale him, and he be apprehended before hee hath gotten the horse out of the same Close, this is felony. *Lamb. 277. & Cromp. 36.a.*

Next of what things Larceny may be committed, and of what not. CHAP. 103.

NOte, that the felonious taking of any thing, whereof another hath propertie, is felony. *22.H.6.Br.Coron.190.*

And therefore Larceny may bee committed by taking of any the moveable goods of any person, as money, plate, apparrell, household stuffe, or corne, hay, trees, or fruit, (that are severed from the ground) or the like, the stealing of them is felony. *Movable goods.*

It is also felony to steale any horses, mares, colts, oxen, kine, sheepe, lambes, swine, pigges hennies, or geese, duckes, turkies, peacockes, and other domesticall beasts or birds of tame nature. *18.H.8.2.* For the nature of these things, being tame (and not savage) if they shall run or flie away, though out of the sight of the owner, yet in what place soever they bee found, they cease not to be his, so as whosoever deteineth them from the owner, is punishable by way of action. *Domesticall.*

It is felony also to take some things that bee of wilde nature; as to take young pigeons which cannot flie, out of another mans dove-house or other house; so to take young Hawkes, or young Herons, out of their nests (or ayries) and breeding in a parke, or other severall ground; so to take fishes that bee kept in a trunke, or severall pond. For that the propertie of such things shall bee alwayes adjudged in the owner of the dove-house, ground, trunke, or pond, in as much as such things cannot (of themselves) goe or get out thereof, but that the owner of such dovehouse, ground, or pond, may take them at all times at his pleasure. *10.E.4.17.a. Bingham & 18.E.4.fol.8.a.* *Wild.*

So of old doves taken in the dovecoat (in the night time especially) and so it seemeth of any other wilde beast or fowle (being of value) and taken within a mans house.

At Cambridge Sommer Assises Anno 1627. there were two indicted and arraigned of felony, before Sir Francis Harvy, for taking fish out of a Net lying in the River, being the severall fishing of Sir Ed.P.

Also it is felony to take any Swans that bee lawfully marked though they be at large; for a man hath property in such: See *Case 7.fol.16.b.17.a.* *quare* if they be flying Swans, and not pinioned.

Also for Swans unmarked, if they bee domesticall or tame, so kept in a moore, or in ponds neere to a dwelling house, and so bee *Domestici* or *Mansi assueti*, to steale such is felony. See *Case 7.fol.16.b.17.a.*

So it seemeth of Swans unmarked, so long as they keepe within a mans Mannor, or within his private Rivers: or if they happen to escape out of a mans mannor, or private rivers, yet if they shall bee pursued and

taken

taken and brought in againe, See *Co. 7. 17. 16. b.*

But if Swans that be unmarked, shall be abroad, and shall attaine to their naturall libertie, then the property of them is lost, and so long felony cannot bee committed by taking of them.

And yet such unmarked & wild Swans, the Kings officer may seise them (being abroad) for and to the use of the King, by his Prerogative, they being *Volatilia Regalia*: also the King may grant them; and by consequence another man may prescribe to have them within a certaine precinct or place; for it may bee intended to have a lawfull beginning by the Kings Grant. *Co. lib. 7. f. 16. a. b. et 18. a. b.*

Also young Swans, or Cygnets, they doe belong to both the owners in common equally, *sc.* to the owner of the old Cocke, and to the owner of the old Henne, and the Cygnets or yong Swans shall bee divided betweene them, *Co. 7. 17.* And to steale such Cygnets is felony, for they shall be of the same nature with the old Cocke or Henne.

Also it is felony to take a tame Deere, which is marked and domesticall especially if the taker knowes it to be tame and domesticall; or that it weareth a Bell.

If a Hart, Bull, or other beast, which hath been wild by nature, and made tame and hath at his neck a little collar of leather, or any other notorious signe, & he doth go abroad, and returneth againe to the house (of his master or owner) at his pleasure; if he bee taken by a stranger and killed by night, or in other secret manner, this is felony by the common Law. *Crompt. Author des courts. 167.*

But by the common law, Larceny cannot bee committed by taking of savage or wilde beasts, fowles, or fish, found in their wildernesse and abroad, or at large; as Deer, Conies, Hawks, Doves, Pheasants, Partridges, Herons, Swans unmarked, or fish that are at liberty, &c. for no person can claime property in them. *Fitz. 87. a. Fi. 43.*

By the statute, *De Foresta cap. 10. Nullus de cetero amittat vitam vel membrum, protectione nostra (sc. par tuer Deare le Roy)* which branch is but an affirmance of the common law. *Crompt. Author des courts. 166.*

Howbeit by Statute it is now made felony to hunt Deere, or Conies (after some sort) in a Forrest, Parke or Warren; or to take a tame beast, or other thing in a Park, by manner of robbery. See the stat. made 3. Ed. 1. 20. & 1. H. 7. c. 7. *Vide preslea Felony by statute, tit. Hunting.*

Also by statute it is felony to steale, take away, or conceale a hawke. *Idem.*

But for the better understanding what the law is, in things that bee *fera Natura*, observe these differences.

Property.

In some things that be *fera Natura*, a man hath a right and property, and in some of them a right of privilege.

There be three manner of rights of property, *sc.*

1. Absolute. This property a man cannot have in any thing which is *fera Natura*, but onely in such things as are *domitæ Natura*.

2. Qualified. These properties a man may have in things *fera Natura*; and to such properties a man may attaine

3. Possessorie. by two meanes, *sc.*

1. By

1 By industry : and this may bee either by taking them onely, (and yet such things bee his no longer than they bee and remaine in his possession or custody ;) or by making them tame (*sc. mansueti, id est, mansueti assueti, or domestica, id est, domui assueti* :) But in these last a man also hath but a qualified property, *sc. so long as they remaine in his possession*, & so long felony may be committed by taking of them away; but if they attaine to their naturall liberty, and have not *animus revertendi*, then the property of them is lost.

2 *Ratione impotentie, & loci* : As where a man hath yong Goshawkes, or herons, or the like, which are *fere Natura*, and doe breed (or ayre) in his ground, he hath a possessory property in them : so as if one takes them when they cannot flie, the owner of the soile may have an action of trespassse, *Quare boscum suum fregit, & tres pullos oseruorum suorum, or ardeorum suorum, precii tantum nuper in eodem bosco nidificantes cepit, & asportauit*. And to take these away is felony as is aforesaid. 18. E. 4. fol. 8. *Stamf. 25. c. Fitz. 86. l. 1. & 89. k.*

Also note, that my hawke which is flying at a fowle, and my deere that is chased out of my Parke, so long as my servant or keeper maketh fresh suit after them, they still remaine in my possession, and the property is still in mee : But if they stray, it is lawfull for any man to take them. *Fi. 45.*

But when a man hath beasts or fowles (that bee savage, and in their wildnesse) *Ratione privilegii*, *sc. by reason of a Parke or warren, &c.* (as Deere, Hares, Conies, Pheasants, or Partridges, or the like, which bee things of Warren) hee hath no property in them : And therefore in an action *Quare Pacum, or warrenum, &c. fregit et intravit, et 3. damas lepores, cuniculos, Phasianos, perdices, &c. ibidem invenit, cepit, & asportauit*, hee shall not say *suos*, for that hee hath no property in them, but they belong unto him *Ratione Privilegii* (for his game and pleasure) so long as they remaine in the place privileged. And if the owner of the parke die, his heire shall have them, and not his executor or administrators; for that without them the Parke (which is an inheritance) is not complete; neither can felony bee committed by taking of them, *Fit. 86. m.*

Neither can larceny bee committed by taking of Dogs of any kind, Apes, Parats, Squirrils, singing Birds, or such like thing (kept onely for pleasure, and not for any profit) though they bee in the house, and made tame.

No not by taking a Bloud-hound or Mastiffe, although there is good use of them, & that a man may bee said to have a property in them, so as an action of trespassse lieth for taking them; yet in regard they are things of so base a nature, no felony can bee committed by taking them.

But yet to take a Dog of any kind, or other thing of pleasure, from the person of another, or out of the possession of another, & in his presence, if it bee done with force or violence, it amounteth to a breach of the peace. And if it bee done with force, and by the number of three persons, or mo, it will amount to a Riot, as it seemeth.

Also it is felony to steale the flesh of any tame, or wild fowle, or of any Deere, or other beast, that is dead, out of the poss. of another man.

So is it to pull the wool from the sheeps backe, or to kil them, and to

take the skin, and leave the body behind.

But note, that in all these cases of felony aforesaid, the thing so taken or stolen must exceed the value of 12*d.* also it must bee of a thing personall and not reall.

Things reall For the taking of any reall chattell, or thing, is no felony: as, If one cuts downe my tree, or my corne and carrieth it away, or pulleth and stealeth my apples hanging on the tree, and carrieth them away, these are no felony, for these things bee part of my freehold till they bee severed.

But if I gather mine apples, or cut downe a tree, or corne of mine owne, then it is felony if another shall carry them away feloniously.

And by the opinion of *Mar.* if a stranger cuts downe my tree, or corn without title, and another time after hee fetcheth it away, that will prove felony, because it was a chattell severed when hee tooke it. See 12*. Aff. p.* 32. *Br. Coron.* 76.

Also to take lead from off a house, or Church, will not amount to felony, for it is parcell of the house or freehold.

Also to take away the evidences of a mans land, or an Indenture of lease, or any obligation, deed, specialtie, or other writings, (be they in or without a box) it is no felony, because they cannot be valued; & again, because they concerne inheritance, chattels reals, or things in action: yet if they bee in a box unsealed, it seemeth that the taking of the box feloniously, is Larceny; but if the box bee sealed, and have writings within it, the box shall bee of the same nature as the writings that bee therein. 10. *E. 4. fol.* 16.

So to take away an Infant in Ward, is no felony.

The owner unknowne. Also the taking & carrying away of such things whereof the owner is unknowne, in some cases is no felony: as the taking away of treasure that was hidden or lost, (bee it money, bullion, or plate) or of wrecke of the Sea, or goods that bee waived, or strayed (before they bee lawfully seized, &c.) it is no felony; but the takers away of such treasure, wrecke, and waife, shall be punished by fine and imprisonment. 22. *Aff. p.* 99. *Br. Coron.* 96. *Fit. Coron.* 187. & 265.

And yet where the goods be *bona cuiusdam hominis, ignoti*, or *bona cuiusdam mortui & ignoti*, or *bona parochiano*, or the goods of a Church, or Chappell (as bells, bookes, chalices, surplices, bell ropes, &c.) or the goods of any Corporation in time of vacation, in these cases there bee owners of them to some purpose, and therefore it is felony to steale such goods. *Vide Cro.* 25.

One *Nottingham* digged a dead body out of his grave, and tooke away his winding sheet, this was holden to be no felony, but punishable as a misdemeanor, & the offender was adjudged to be whipped, &c. for it: this was at Cambridge Sommer Assises, Anno 1617.

His owne goods. Note also, that a man may commit felony, by taking his owne goods; as,

If *A.* doe lend or deliver goods to *B.* to keepe, and after *A.* doth take them away feloniously, or privily and fraudulently (to the intent to charge *B.* or to recover damages for the same against *B.* by an action of *Detinue*) this is felony in *A.* and yet the property of the goods were in him

him: yet *M. Brooke, Coron. 142.* maketh a *felony* thereof.

Mar. 2. 12. Crump 17. But if I lend my plate, or deliver my goods to another to keepe, and hee melteth my plate, or changeth the fashion of my goods; now if I should take that mettrall, or those goods feloniously, it were felony in mee, because the propertie is altered by altering of the fashion. See a little before.

If the party robbed taketh his goods againe from the thiefe, and suffereth him to escape. *Vide often in Accessories.*

Crump 37. Pl. 127. A man findeth my purse in the high way, and being asked thereof, denieth it, this seemeth to bee no felony, for he came not therby at the first feloniously: But by the Leviticall Law hee was to restore the thing found, with an addition of the fift part more thereto. *Levit. 6. 3. 5. Num. 5. 7.*

A man hath two chaines, the one of gold, the other of copper, and hee selleth the gold chaine, and delivereth it, and presently after hee secretly conveyes away his gold chaine, and puts the copper chaine in the place thereof, this is felony *Le. 2. Mr. Cock.*

So if one taketh away my horse, and leaveth another of his (which is like unto mine) in stead thereof, this is felony *ibidem.*

Crump 17. Pl. 144. A man cometh to my wife, or to my servant with a false message, token, or letter made in my name, and thereby getteth my goods, yet this is no felony, but it shall bee punished by the statute of 33. *H. 8. cap. 1.* See *ante h. tit. Counterfeiters.*

what persons are chargeable in Larceny. CHAP. 104.

Pl. 40. Crump 16. Tit. 12. **A** *feme covert* doth steale goods by the compulsion or constraint of her husband, this is no felony in her. *F. Coron. 160. & Fitz. Coron. 199. Br. Coron. 108.* For where the words of the Law are broken by compulsion, there the Law is not offended, neither shall any person be damnified for doing a thing whereto hee is inforced or compelled, but such compulsion shall be a good excuse in our Law. *Pl. 19. a. b.*

Mar. 2. 12. But yet if by the compulsion of her husband, shee committeth murder, this is felony in them both.

Pl. 40. Crump 16. Tit. 12. If a *feme covert* doth steale goods by the commandement or procurement of her husband (without any constraint) this hath beene holden to be felonie in her, *sc.* that the wife in such case is a principall, and the husband but an accessary: *M. Bracton* also saith it is felony; for *Licet uxor obedire debeat viro, in atrocioribus tamen non est ei obediendum*; but *M. Stamford* and others seeme to bee of another opinion, *Stamf. 26. P. R. 130. Br. Coron. 108.*

F. Cor. 160. Tit. 12. 77. If the husband & the wife joyne in committing of Treason, the necessity of obedience doth not excuse the wives offence, as it doth in felony, because it is against the Common-wealth; for *Privilegium non valet contra Rempublicam. Ed. 32.*

But if the husband and the wife joyntly together doe steale goods, this shall bee taken to bee the onely act of the husband, and such felony shall be imputed onely to the husband, and not to bee felony in the wife, by some opinions. *Vide Stamf. 26. & Lamb. Fitz. Coron. 160. & Ed. 31. et 37.*

that the wife can neither bee Principall, nor Accessary, in regard of the subjection & obedience shee oweth to her husband.

And yet M. *Bracton* seems to bee of another opinion herein, saying, *Quid erit si uxor cum viro convicta fuerit, vel confessa fuerit quod viro suo consilium prastiterit & auxilium, nunquid tenebuntur ambo, imo ut videtur* (and a little after hee saith) *alter eorum potest esse malus per se, & alter bonus, ita uterq; eorum possit simul et coniunctim esse malus.*

And againe, *Sic ut sunt participes in crimine, ita debent esse participes in pena. Ibidem.*

And M. *Bracton* seemeth to make this difference, that although the wife may conceale her husbands offence in case of felony (as also shee may relieve and keepe company with him, knowing him to bee a felon) *Consentire tamen non debet felonie viri sui, neque esse coadiutrix, sed feloniam et nequitiam viri impedire quantum possit.* And accordingly at Cambridge, at Lent Assises, Anno 1619. the wife was in such case indicted and arraigned with the husband for robbing of a windmill.

Againe at Cambridge Lent Assises 1620. one *William Houghton*, and *Katherine* his wife were together indicted and arraigned for stealing certaine apparell; and the husband and wife were indicted for the like, at Lent Assises, Anno Dom. 1624.

Also the wife is chargeable for a trespassse done by her & her husband together; and therefore (howsoever) it shall be safe for the Just. of P. in such cases to commit the wife to the gaole, as well as the husband.

And yet for this case of a trespassse committed by the husband and wife, Sir *Fr. Bacon* giveth this Rule. *Excusat aut extenuat delictum in Capitalibus, quod non operatur idem in civilibus. sc. In capitall causes, in favorem vite,* the Law will not punish in so high a degree, except the malice of the wil, and intention appeare. pag. 36, 37.

But a woman covert, alone by her selfe (the husband not knowing thereof) may commit Latency, and may bee either principall, or accessarie; as if she steale another mans goods; or receive the thiefe that stealeth them; or shall receive stolne goods into her house, knowing them so to bee; or shall locke them up in her chest or chamber, her husband not knowing thereof: and in such case if her husband so soone as hee knoweth thereof, doe forthwith forsake his house and her company, and make his abode elsewhere, hee shall not bee charged for her offence; whereas otherwise the law will impute the fault to him, and not to her. *P.R. 130.*

Goods are delivered to the husband to keepe; and his wife stealeth them, it is no felony; otherwise is it if the husband had delivered them to a stranger, and then the wife had taken them feloniously out of the possess. of the stranger, this had beene felony in the wife. *Mar. Lett. 12.*

Also the wife shall not bee accounted a felon, for taking or stealing the goods of her husband: & if the wife doe take her husbands goods, secretly, and delivers them to a stranger knowing thereof, yet this is no felonie in the stranger. See *Abr. d' Ass. fol. 71.*

But if a man doe take away another mans wife, with her husbands goods against the wives will, this is felonie by the stat. Westm. 2. c. 34.

as it seemeth; and so if any man takes away another mans wife, with her husbands goods, against the husbands will, this also is felony.

If a married woman shall deliver to her adulterers, her husbands goods, this is felony in the Adulterer. *Le 9th Mr. Cock.*

And if the husband commits Larceny, and the wife knowing thereof, doe receive or relieve him; &c. shee is not thereby Accessary to the felony. *Vide postea tit. Accessorie.*

Note that a woman convicted of or for the felonious taking of any mony, goods, or chattels, above the value of xij. d. and under x.s. or as accessarie to any such offence, (the said offence being no burglary, nor robbery in or neer the high way, nor the felonious taking of any goods from the person of another privily) shall for the first offence bee branded in the hand, and further punished by imprisonment, or whipping, at the discretion of the Judge or Justice; before whom shee shall be so convicted. *21. E. 6. cap. 6.*

If a servant by the compulsion of his Master stealeth another mans goods, *Servant.* this is felony in them both, notwithstanding such compulsion. See more of servants here before, *sub hoc tit.*

An ideot, lunatike, dumbe & deafe person, and an infant, are chargeable in larceny, after the same sort, as they are chargeable in homicide; *Idiot. Infant.* which see here before in Manslaughter, *cap. 95.* And yet if an infant shall commit larceny, and shall bee found guilty thereof before the Justices of P. it shall not bee amisse for them to respite the judgement; and so hath it often beene done by the Judges. See *Stamf. 27. & 3. H. 7. fo. 1. b. & 12. b. et 35. H. 6. 11. Br. Covert. 80.*

At Cambridge Assises in Lent, 1619. before Sir Henry Montague, and Sir Iohn Doddridge, Judges of Assise there, they sitting together upon the prisoners, an Infant about 14 yeares of age, was arraigned before them of Larceny, and was found guilty, and upon demand of his Clergie had the same allowed him, and was burned in the hand.

The like was done there at Lent Assises, 1624. before Sir Randall Crew, Lord chiefe Justice. See *Dor. et Stud. fol. 148.*

A Bailife, &c. distraineth secretly for rent, & after selleth the Distresse; and when the owner demandeth his goods which were so distrained, the bailife denieth them, this is felony. *Le 3rd M. Cock.*

If an Escheator, or other officer commeth to a man, and telleth him that hee is outlawed, when hee knoweth that hee is not outlawed, and by colour thereof hee taketh his goods, this is felony. But if the party bee in deed outlawed, and the officer commeth to take his goods, and the other party sheweth him a *Super sedes*, and notwithstanding the officer taketh away his goods, this is no felony. *Ibid.*

If an officer shall levie any duty, for the king, without warrant, this is felony. *Le 9th Mr. Cock. Vide My Office of Sherife, cap. 126.*

So where any Officer shall levie any duety, without sufficient warrant or authority, and shall after convert the same to his owne proper use, it seemes to be felony.

Other Felonies by the Common Law. CHAP. 105.

Burning of a barne (which is adjoyning to a dwelling house) in the night feloniously, is felony by the common law. *Burning houses.*

So is it to burne a barne (in the day tyme) having corn in it, & though it adjoyne not to the dwelling house. *Co. 4. 20.*

Burning of any dwelling house, or other house parcell thereof, willingly and feloniously done, is felony by the common law, whether it be done by night, or by day. *Br. Coron. 135. 155. 226.*

Burning of any other house, or of a stacke of corne, feloniously, seemeth also to bee felony by the Common law: for the words of the statute of *Westm. 1. cap. 15.* (which statute seemeth to bee but a rehearfall of the Common Law, *Br. Malapr. 78.*) ordaineth that such as bee taken for burning (generally) feloniously done, be not bailed: and of that opinion seemeth Malt. *Britton*, who wrote presently after the making of the same statute. *Britton*, fol. 16. See *Stat. Wincestr. 13. E. 1. ca. 1. & 28. E. 1. cap. 17.* And it appeareth also by *Britton*, lib. 1. cap. 17. that such offenders were by the Common Law to have been burned. *Fitz. 269. b.*

The booke called the *Mirror of Iustices*, among other capitall offences, hath this, *le crime de Arson*: and he describeth the offenders in this sort, *Ardoirs sont qui ardent Citie, ville, maison, boime, best, ou auters Chastels, delours felony in temps de peace, purpaine ou vengeance.*

If a man will burne his owne house willingly, this is no felony. But if by such burning he burneth his neighbours house, this seemeth to be felony.

A man intending to burne another mans house, casteth fire thereupon, and after that it is kindled and burnt in part, it is quenched, yet this is felony, although the whole house were not burnt downe.

So it seemeth if a man shooteth unlawfully in a hand gun, and the fire thereof sets another mans house on fire, and burneth it downe, this is felony *quere.*

If an Indictor (or Juror) in case of treason, or felony, shall discover the Kings Counsell, and his fellowes, it hath beene adjudged felony. *Vide antea, tit. Petit Treason.*

Rescous. Rescuing, or taking away from an officer, any offender, who is attainted, imprisoned, or but arrested for felony, such *Rescous* is felony, as well in him that made the *Rescous*, as in him that is rescued. See more here *pag. sequent.*

Escape. Also when a man hath arrested another for felony, and after letteth him goe at libertie, this is a wilfull escape, and shall bee adjudged felony in him that did so let him escape. And in case of treason, such escape is treason. See *paulo postea.*

Breaking of prison. Breaking of prison (before the statute *De frangentibus prisonem*, made 1. E. 3.) was felony by the common law, for what cause soever hee were in prison, yea though hee had beene imprisoned but for a trespassse. But now that stat. hath changed the common law therein: so that now if a man be imprisoned, or arrested, or taken for a trespassse, and doe make an escape, or bee rescued by a stranger, this is but finable at this day. *Vide Fi. libro 2. et stat. 10. E. 3. hic cap. 106.*

If an offender which is adjudged, or otherwise by law is to abjure the Realme, shall depart, and after such departure shall returne againe without the kings licence, then if the cause for which hee did abjure were felony, the offender so returning shall have judgement of life and of member, by the common law: but if the cause was not for felony, then

et a ad abis. is is if

then the offender by the common law shall bee taken, and onely make a fine to the king. But now see the statute of 35. *El.ca. 1. & 2.* where it is made felony also for popish Recusants, or other Sectaries which are to abjure, if after Abjuration they shall returne without the Kings speciall Licence. See *hic postea*.

Felonies by Statute. CHAP. 106

pl. 1. c. 14. Felon. 1. IF any man being the Kings Sworne Servant &c. shall confederate, imagine, compasse, or conspire with another, to destroy the King, or any Lord of this Realme, or any other sworne to the Kings Councill, or the Steward, Treasurer, or Controller of the Kingshouse, it is felony: but what the Just. of P. may doe herein, see *antea tit. Felony*.

1. Ep. 1. c. 14. Felon. 1. Breaking of prison by one being therein for felony, or by one being a prisoner for felony, is felony. breaking prison.

And yet M. *Finch* saith, that if the prison bee broken by the partie himselfe, it is felonie, whatsoever the cause of his imprisonment were, yea although it were but for a trespassse. *Vide libro 2. quere, et vide Fitz. Coron. 248. Escape non ad n. licabitur vers ipsum qui commiss. est protransgress.*

Ep. 1. c. 14. Felon. 1. Now every one who is under arrest for felony, is a prisoner, and that as well without the prison, as within; or in the stocks in the high street; or in the possession of any that hath arrested him, or that hath the keeping of him being arrested for felony. *Vi. Libro 2.*

1. Ep. 1. c. 14. Felon. 1. And therefore if any person who is under arrest for felony, or suspicion thereof (whether he be in the gaole, or out, or but in the stocks, or but in the possession of any that hath arrested him) if hee shall make an escape, this is a breaking of prison in such prisoner, and is felony.

And yet one committed to the Constable (by the Just.) for suspicion of felonie, making an escape from the Constable, was after taken againe and indicted and arraigned for that felony, and by the Jurie of Life and Death was found not guiltie of that felony; and after was indicted for the escape: but here considering the prisoner was found not guiltie for the first felony, therefore his escape from the Constable, was holden not to bee felonie; and so I have knowne the Jurie directed by the Judge of Assise.

Before the statute of 1. *Ed. 2.* if it had not bene the Kings prison which had bene broken, it had bene no felony, as it appeareth by *Britt. fo. 17.* And with him also agreeth the Booke called the *Mirror of Justices lib. 2.* who saith thus, *Gaole nest auter chose que common Prison, et nul vera tiels fr'q; le Roy: Private prisoe est dauter dont a chescun list descaper que poet, si non que il face auter trespasse que lescaper.*

pl. 1. c. 14. Felon. 1. But note, that at this day there is no difference whose prison the offender doth break, whether it be the Kings prison, the Lords of a Franchise, or any other persons; for the letter of the statute is, *Prisonam frangentibus*, and not *Prisonam nostram*; so that whose prison soever it be which is broken, it is within the compasse of this stat. *Stat. 3. 1.*

Also whether it be a comon Gaole, or a privat Gaole, or Prison, yea, or but the constables house, or the house of any other person who hath the custodie of him for felony, there is no difference; for these are pri-

sons for the time, & so within both the words and meaning of this stat.

Also by this statute the breaking of prison is felony in the prisoner himselfe. And yet if the prison shall be on fire by Casualty, and they within shall breake the prison for saving of themselves, this is no felony, but excusable by the law of Nature. *Plow. fol. 113. b. 14. H. 7. 29. Reade 15. H. 7. 2.*

Rescous. And if a stranger doth breake the prison, or open the stocks, or make a *Rescous*, whereby one imprisoned, or arrested for felony, escapeth, this is felony both in the prisoner, and in the stranger, although the prisoner was never indicted of the felony. *1. H. 7. 6. 1. Ed. 3. 19. Dyce 19.*

By some opinions, if a stranger shall disturbe the arresting of a Felon, it is no felony, except the Felon were taken & arrested, and after rescued: yet *Fitz. Inf. P. fol. 114.* saith, that such disturbance before arrest, is felony. *9. H. 4. 1. F. Cor. 13. Stat. 13. 2.*

If a prisoner bee rescued at the Gallowes, or as hee is going to execution, this is a breaking of prison, and felony within this statute. And yet note this difference, *sc.* that if a felon in going to his execution, &c. bee rescued from the Sherife, this is felony, if it be presented before the Justices &c. & so found by Enquest. But otherwise it is if it commeth in by the Returne of the Sherife, there it is no felony. *1 Hen. 7. fol. 6. Fitz. Indictment 30.* *1. H. 7. 4.*

Escape. If a Gaoler, a Constable, or any other, which hath a prisoner under arrest for felony, or suspicion thereof, voluntarily letteth, or suffereth him to goe at libertie; (though this bee no breaking of prison, yet) this is felony in the Gaoler, Constable, or him that letteth such prisoner escape, but it is no felony in the prisoner: but if such a prisoner shall escape by the negligence of his Keeper, then the felony resteth in the prisoner onely, and not in the Gaoler, &c. *P. R. 147. 149. 44. All. 8. Br. 25. 11. Stat. 13. 1.*

If the Gaoler or Keeper shall marrie a Felon which is in his Gaole, this is an escape; but *quere* whether it be felony in the Gaoler or no.

If a Gaoler shall let a felon to mainprise, which is not mainpernable orailable, *dicatur* that this is no felony, but finable: for although it were voluntarie, yet it was *per ignorance del Ley*. But *quere* hereof, for that the Gaoler hath no authoritie to let any prisoner to baile; And the prisoner being in for felony, the Sherife himselfe at this day hath no authority to baile such a prisoner, except it bee by vertue of the Kings Writ, &c.

If the Constable (or other officer) shall voluntarily suffer a thiefe, being in his custodie, to goe into the water to drowne himselfe, this escape is felony in the Constable, and the drowning is felony in the thiefe, *quia felo de se*. Otherwise if the thiefe shall suddenly (without the assent of the Constable) kill, hang, or drowne himselfe, this is but a negligent escape in the Constable.

The voluntarie letting of a Felon to escape, which is not arrested for felonie, though hee knoweth of the felonie, yet it is no felonie; neither can it be an escape without an arrest: and yet such an offender (being an officer) may for such his negligence or default, be indicted, and fined, as it seemeth by the words of the Commission: *Quere* if hee bee not accessory to the felony. See *Br. Escape, 43.* *P. R. 149. 150. 9. H. 4. 1. Stat. 13. 1.*

Note that a man is alwaies said to bee in prison, so long as hee is with- *Dyce 40. in*

in the sight of the Gaoler, or of him that hath him in custody, though he doe breake away or escape.

Statute 23.
B. 1. c. 4.
135.

For an escape is properly, when a prisoner shall escape and get out of the view of his gaoler or keeper, & shall not be taken again by fresh suit.

13. E. 4. 2.

And if a prisoner shall make an escape (of his own wrong, and without the consent of the Gaoler, or other person that hath him in custody) though he escape out of their sight, and into another county, yet if he be taken again upon fresh suit, before the Gaoler, &c. (be sued, or) hath fined for the escape (though it be seven yeares after) yet this is no escape; as it seemeth, for which the officer shall be charged; for there is no prejudice to the King by the escape, though it be felony in the prisoner, as aforesaid, & a breaking of prison in him. Co. 3. 44. & 52. accordeth in case of a prisoner taken in execution, that shall make an escape of his own wrong.

Co. 1. 44.
Lamb. 13. 2.

If a Gaoler, or other officer, &c. shall licence his prisoner to goe abroad for a time, and to come againe; this is an escape, because the prisoner is found out of the bounds of his prison, though the prisoner returne againe according as hee shall bee prescribed: and so is it, if the officer shall suffer his prisoner to goe abroad for a time, by baile or baston, this is an escape; yet they are holden in both cases to bee but negligent escapes in the officer, and so but finable. But *quære*, for the Gaoler and other officers ought to keepe their prisoners in *Salva & arcta custodia*. Vide post. tit. Imprisonment.

Fitz. Cor.
117. & 118.

Note, that the Sherife of every County shall have the keeping of, and shall bee chargeable and charged with the common gaole and prison of the same county, and with all the prisoners therein; and must put in such gaolers or keepers for whom they will answer, as appeareth by the statutes 14. Ed. 3. c. 10. & 19. H. 7. c. 10. which also seemeth to have beene the common law before, (as you may see by the Preamble of the statute of 14. Ed. 3. & Co. 4. 34.) and therefore the high Sherife himselfe shall bee answerable for an escape of a felon, suffered by his Gaoler, and may bee indicted for the same (see the *Presidents* in *Lambert, West, and Crompton*.) And so the high Sherife as hee hath an office of great antiquitie, and of great trust and authority (for the time) so withall it is a place of great perill and charge; and if the rigour of law should bee layd upon them, then should they have a warme office, and bee well rewarded. But in such cases I have observed the favourable exposition and dealing of the learned and reverend Judges: First, you shall find in Sir Ed. Cokes Report, lib. 9. f. 98. that the gaolers who have the actuall possession shall bee answerable for escapes, if they have wherewith: also *Popham* chiefe Justice, did cause one *Seaver* (a Gaoler at Cambridge) to bee indicted, arraigned and hanged for an escape of a felon, suffered by him.

117. 118.
Co. 1. 13.
West 1. 1.
Co. 4. 1.
Lamb. 1. 5.

Temp. El. 2.

In the *Dist. & Stud. cap. 42.* this difference is taken. *sc.* that if the escape were by default (*sc.* a negligent escape) of the gaoler, that the King may charge the gaoler if hee will, or the Sherife may bee charged by reason of the stat. of 14. E. 3. cap. 9.

But if it bee a wilfull escape in the gaoler (which is felony in him) the Sherife shall not bee bound to answer to the felony, (See there, fol. 135. & 137.) But there the Sherife may bee fined to the value of his goods.

goods. *Stamf. 35. b.*

Escape is of two sorts.

Now an escape is of two sorts: voluntary, and negligent.

Voluntary escape, is where one doth arrest or hath imprisoned another for felony (or other offence) and after voluntarily letteth him goe at liberty where he will. *Stamf. 35.*

Negligent escape, is when the party arrested or imprisoned, doth escape against the will of him that arrested or imprisoned him, and is not freshly pursued and taken againe before hee hath lost the sight of him which escaped; the penalty thereof seemeth to bee onely a fine at the discretion of the Judges or Justices: Yet see *Stamf. 35. k.* a difference of the fine, where the prisoner is attainted *le jure terra C. li.* where but indicted C. s. and where only taken upon suspicion, *semble dispunijt alle. quere. et vide f. Coron. 224. 316. 454. et hic infra*, that in Case of a trespassse a negligent escape is fineable. *Stamf. 35.*

But for voluntary escape, if the arrest or imprisonment were for felony, it shall bee adjudged felony in him, which did voluntarily suffer the prisoner to escape; and if the arrest &c. were for Treason, it shall bee adjudged Treason; and if the arrest or imprisonment were for a trespassse, it shall be adjudged a trespassse: And in case of felony, there is no difference, whether the felon be arrested by an officer, or by another. See *Br. Cor. 112.* *Stamf. 35.*

Also in case of a trespassse, or other offence of what kind soever, (being neither treason nor felony) there seemeth no difference, whether the escape suffered by the officer, &c. bee voluntary, or negligent; but that the officer in both cases shall bee fined for such an escape, according to the quantitie of his fault, by the discretion of those that shall bee Judges of it.

One *Nichols* assaulted *Cholmely* to rob him, and killed him; after *Queen Eliz.* granted *Nichols* his pardon; but *Cholmely* his wife having commenced her appeale against *Nichols*, hee was still detained in prison at the womans suit; after the Gaoler suffered *Nichols* voluntarily to goe at large, and so to escape; by the opinion of *M. Plowden* this was felony in the Gaoler, although *N.* the prisoner were now no felon as to the Queene, in regard he had obtained his pardon, *Plow. 476. b.*

A prisoner found guilty of petty Larceny, is adjudged to be imprisoned by the space of a moneth (for his punishment) and after the moneth he breaketh prison, and escapeth, *quere* what this is in the prisoner, and what in the gaoler: It is holden that the gaoler shall bee charged with this escape; but if a prisoner bee discharged (by judgement) paying his fees, if hee escape, here the gaoler is not chargeable; the difference is, the prisoner in the first case was by judgement committed to prison; and in the last case hee is adjudged to bee acquit of his imprisonment, paying, &c. and yet hee is a prisoner untill hee hath payd his fees. *21. H. 7. 17. a. Br. Escape 16. Plow. 465.* *F. Cor. 419. & 421. P. B. 336.*

Note that a voluntary escape is no felony, if the act done were not felony at the time of the escape made; as if *A.* do strike *B.* & hurt him mortally, whereupon the Constables doe arrest *A.* and after willingly suffer him to escape, and after *B.* dieth of that stroke, this escape is no felony, either in the Constable, or in the prisoner; yet the Constables shall make a great fine, yea shall (or may at the discretion of the Judges) bee

bee fined to the value of their goods (as it seemeth) by 11.H.4.12. and *Stamf. 35.b.* because this escape was voluntary.

If a man bee wounded, and the percussor is voluntarily let goe at large by the Gaoler, and after death ensueth of the hurt, yet this is no felonious escape in the Gaoler. 11.H.4.12. *Ba. 38.*

Cromp. 39.

The voluntary suffering him to escape, who hath killed another *se defendendo*, or by misadventure, or of him that hath committed petit Larceny, seemeth not to bee felony, for that these offences are no felony of death; but hee that suffereth such an escape, shall bee fined onely, *Cromp. 39.* Yet *quære*, for they that suffered this escape, are not to judge whether these offences bee felony or no. See hereof *postea tit. de ad nec agunt Felons.*

A man was taken for suspicion of felony, and was delivered to the Constable of C. and after escaped for want of good keeping, and the Constable was therefore taken and arraigned; And pleaded, that for as much as the felon was not taken with the manner, nor at the suit of the party, nor indicted of felony, therefore it was no escape, &c. And so was the opinion of the Court then. See 42. *Aff. p. 5. Br. Escape 19.*

But the contrary was after holden in case where the escape was voluntary, although the prisoner were taken onely upon suspicion. 44. *Aff. p. 12. Br. Escape 31. & Dyer 99.* that it is felony, although the prisoner were not indicted of felony.

11. H. 4. 12. b. 38. Cromp. 39.

Note also, where one is a prisoner by arrest onely, and hee doth escape, there the escape shall bee presented before the Justices of peace, or other Justices having authority to inquire of the escape, before hee that suffered the escape shall answer it *sc.* before any thing shall bee taken, or levied, by the Sherife, or other officer. *Vide Co. 11. 64. 85. & Star. Westm. 2. c. 4.*

11. H. 4. 12. b. 38. Cromp. 39. 11. H. 4. 12. b. 38. Cromp. 39.

Note also, if a man be arrested for suspicion of felony, by the Constable, or other person, and after they shall have intelligence that there is no such felony committed, here they may set the party arrested at libertie againe, and they shall not bee charged with the escape; for there can be no felon, where there is no felony committed.

44. H. 12. Cromp. 40. 11. H. 4. 12. b. 38. Cromp. 39.

But if a man bee slaine, or that there bee any other felony committed, and one is arrested for the same felony, or for suspicion thereof, though hee that made the arrest, shall after have intelligence, and certaine knowledge, that the party arrested is not guilty of that offence, yet hee or any other may not set the party so arrested at liberty; for now hee must not bee delivered by any mans discretion, but by course of law; otherwise it will prove a voluntary escape, and so felony, or at least finable.

And yet if a Watchman shall take any man for suspicion of felony, he may inquire of his good name and fame, and if hee findes him to bee of good name and fame, hee may let him goe. See the *old statute of peace*, imprinted, *Anno 1559. fol. 13.* But it were more safe for the Watchman to deliver such suspected person to the Constable, Justice of peace, or to the Sherife, according to the stat. of Winchester. See *hic antea tit. IV. ch. ap. 60.*

11. H. 4. 12. b. 38. Cromp. 39.

If a Justice of peace shall send for a felon out of the Gaole, and shall deliver him without baile, this seemeth to bee a voluntary escape, and so felony

felony in the Justice, otherwise where the Ju. erreth *pro defectu scientie*, as to baile one that is not baileable; this is but a negligent escape.

If the Ju. of P. or Sherife shall baile one who is not baileable, this is an escape. *Fitz. Escape 4. & Cor. 246.* (sc. a negligent escape, if it bee in ignorance, *ut supra.*)

But if one that is brought before a Just. of P. for suspicion of felony, shall confesse the felony before the Just. and yet he shall suffer the prisoner to goe (at large without baile, this is a voluntary escape, &c. *v. Cro. 39.*)

Now to proceed with Felonies by Statute. CHAP. 107.

BYggers committed with mankind or beast, is felony (without benefit of Clergy) 25. H. 8. 6. 5. *Eliz. 17.* it being a sinne against God, Nature, and the Law, and in ancient times such offenders were to be burned by the Common Law. *Fitz. 269. b. Fi. libro 2.*

One describeth this offence, to bee *Carnalis copula contra naturam*, & *hac per confusiohem* { *Spectrum*, sc. home, ou sene, ove brute be. st.
 { *Sexuum*, sc. home ove home, sime ove sime.
Et copiet estre sans penetration; Car le use del corps descend le seede in tiel caser,
fait ceo Buggery deins ceo stat. sans penetration: Et issint fuit tenuz in le c-se le
Sign' A. come ieooye.

Burning of houses, and stacks of come, see before, *cap. 105.*

If a man maketh a bill or writing, and layeth or casteth the same at another mans doore, therein threatening to burne his house, if hee giveth him not some money, &c. this hath beene taken to bee felony. See 6. *H. 7. f. 13. a.* And *quare*, what statute it is that the booke meaneth. Note by the statute of 8. *H. 6. cap. 6.* such offence was made treason, if after the offender did burne the house; but that statute of 8. *H. 6.* standeth now repealed.

Congregations, and confederacies holden by Masons, it is felony in the causers thereof, and fineable in the Masons that come to such congregations. 3. *H. 6. cap. 1.*

Cutting out of any the Kings subjects tongues; or putting out their eyes, of malice pretended, is felony. 5. *H. 4. 5.* And for these the offender shall loose his life, lands, & goods.

Cutting or breaking downe of Powdike, or other bankes in Marshland, maliciously, is felony. 2. & 3. *Ph. et M. cap. 19.*

1 Conjurat[i]on, or invocation of any evill Spirit, for any intent, &c. or to bee counselling, or aiding thereto, is felony without benefit of Clergy. See *Exod. 22. 18. Dent. 18. 11. et Levit. 20. 27.*

2 To consult, covenant with, entertaine, imploy, feed, or reward any evill spirit, to or for any intent or purpose, is felony in such offenders, their aiders, and counsellors.

3 To take up any dead body, or any part thereof, to bee imployed or used in any manner of Witchcraft, is felony in such offenders, their aiders, and counsellors.

4 Also to use or practise Witchcrafts, Enchantment, Charme, or Sorcerie, whereby any person shall bee killed, pined, or lamed in any part of their body, or to bee counselling or ayding thereto, is felony: By the ancient common law such offenders were to bee burned, *Fitz. 269. b.*

5. Also

5 Also the second time to practise Witchcraft, &c. thereby to declare where any treasure may bee found, is felony.

6 Or where any goods lost, or stolne, may be found.

7 Or whereby any cattell or goods shall be destroyed or impaired.

8 Or to the intent to provoke any person to love.

9 Or to the intent to hurt any person in their body, though it bee not effected: All these are felony, *sc.* the second offence; and without benefit of Clergie.

Now against these Witches, (being the most cruell, revengefull, and bloudie of all the rest) the Justices of peace may not alwayes expect direct evidence, seeing all their workes are the workes of darkenesse, and no witnesses present with them to accuse them; & therefore for their better discoverie, I thought good here to insert certayne observations, partly out of the book of discoverie of the Witches that were arraigned at Lancaster, *an. Dom. 1611:* before Sir James Altham, and Sir Ed. Bromley, Judges of Assize there; and partly out of M. Bernards guide to Grand Jury men.

1 These Witches have ordinarily a familiar or spirit, which appeareth to them; sometimes in one shape, sometimes in another, as in the shape of a Man, Woman, Boy, Dogge, Cat, Foale, Fowle, Hare, Rat, Toad, &c. And to these their spirits they give names, and they meete together to christen them (as they speake) *See. 107. 113.*

2 Their said familiar hath some big or little teat upon their body, & in some secret place, where hee sucketh them. And besides their sucking, the Devill leaveth other markes upon their body, sometimes like a blew spot, or red spot, like a Flea-biting; sometimes the flesh suncke in & hollow (all which for a time may be covered, yea taken away, but will come againe to their old forme.) And these the Devills markes be insensible, & being pricked will not bleed, & bee often in their secretest parts, and therefore require diligent and carefull search. *See. 113. 119.*

These first two are maine points to discover and convict these Witches; for they prove fully that those Witches have a familiar, and made a league with the Devill. *See. 60.*

So likewise if the suspected be proved, to have been heard to call upon their spirit, or to talke to them, or of them, or have offered them to others.

So if they have beene seene with their spirit, or seene to feed some thing secretly; these are proofes they have a familiar, &c.

3 They have often pictures of clay or wax (like a man, &c. made of such as they would bewitch) found in their house, or which they roast, or bury in the earth, that as the picture consumes, so may the parties bewitched consume.

4 Other presumptions against these Witches, as, if they be given to small cursing and bitter imprecations, and withall use threatnings, to bee revenged, and their imprecations, or some other mischief presently followeth. *See. 61. 205.*

5 Thier implicate Confession; as when any shall accuse them for hurting them or their cattell, they shall answer, You should have let mee alone then; or, I have not hurt you as yet. these and the like speeches are in manner of a Confession of their power of hurting. *See. 206.*

6 Their diligent inquiry after the sicke party, or comming to visit

visit him or her, unless for; but especially being forbidden the house.

7 Their apparition to the sicke party in his fits.

8 The sicke party in his fits naming the parties suspected; & where they bee or have beene, or what they doe, if truly.

9 The common report of their neighbours, especially if the party suspected be of kinne, or servant to, or familiar with a convicted Witch.

10 The testimony of other Witches, confessing their owne witchcrafts, and witnessing against the suspected, that they have spirits or markes; that they have beene at their meetings; that they have told them what harme they have done, &c. *Ber. 212, 213.*

11 If the dead body bleed upon the Witches touching it.

12 The testimony of the person hurt upon his death.

13 The examination and confession of the children (able and fit to answer) or servants of the Witch, especially concerning these six observations, *sc.* If the party suspected have a familiar, or any teate, or pictures; her threatnings and curings of the sicke party, her enquiry after the sicke party, her boasting or rejoycing at the sicke parties trouble: Also whether they have seene her call upon, speake to, or feed any spirit, or such like, or have heard her foretell of this mishap, or speake of her power to hurt, or of her transportation to this or that place, &c.

14 Their owne voluntary confession, (which exceeds all other evidence,) *sc.* of the hurt they have done, or of the giving up their soules to the Devill, and of the spirits which they have, how many, how they call them, and how they came by them.

15 Besides, upon the apprehension of any suspected, to search also their houses dilligently, for pictures of clay, or wax, &c. haire cut, bones, powders, bookes of witchcrafts, Charmes, and for pots or places where their spirits may bee kept, the smell of which place will stinke detestably.

Now to shew you further some signes, to know whether the sicke party bee bewitched.

1 When a healthfull body shall bee suddenly taken, &c. without probable reason, or naturall cause appearing, &c. *Ber. 169.*

2 When two or more, are taken in the like strange fits, in many things.

3 When the afflicted party in his fits doth tell truly many things, what the Witch, or other persons absent are doing or saying, and the like.

4 When the parties shall doe many things strangely, or speake many things to purpose, and yet out of their fits know not any thing thereof.

5 When there is a strength supernaturall, as that a strong man or two, shall not bee able to keepe downe a child, or weake person, upon a bedde.

6 When the party doth vomit up crooked pinnes, needles, nails, coales, lead, straw, haire, or the like.

7 When the party shall see visibly some Apparition, and shortly after some mischief shall befall him. *Ber. 173.*

Note for the better riddance of these Witches, there must good care bee had, as well in their examinations taken by the Justices, as also in the drawing of their Indictments, That the same bee both of them set downe directly in the materiall points, &c.

As

That

That the Witch (or party suspected) hath used Invocation of some Spirit.

That they have consulted or covenanted with their Spirit.

That they employed their Spirit, &c.

That they have fed or rewarded their Spirit.

That they have killed, or lamed, &c. some person, &c.

And not to indict them genegally for being Witches, &c.

The difference betweene Conjuracion, Witch-craft, and Inchantment, &c. is this: *sc.* Conjurers and Witches have personall conference with the Devill, or evill Spirit, to effect their purpose, See 1 *84 m.* 28. 7. &c. The Conjurers beleeve by certaine terrible words, that they can raise the Devill, and make him to tremble; and by impailing themselves in a circle (which as one saith, cannot keepe out a mouse) they beleeve that they are therein inscensed, and safe from the Devill whom they are about to raise; and having raised the Devill, they seeme by prayers, and invocation of Gods powerfull Names, to compell the devill to say, or doe what the Conjurer commandeth him.

The Witch dealeth rather by a friendly and voluntarie conference, or agreement betweene him (or her) and the devill or familiar, to have his or her turne served, and in lieu thereof the Witch giveth (or offereth) his or her soule, blood, or other gift unto the devill.

Also the Coniurer compactes for curiositie, to know secrets, or work miracles: & the Witch of meere malice to doe mischief, & to be revenged.

The Inchanter, Charmer, or Sorcerer, these have no personall conference with the Devill, but (without any apparition) worke and performe things (seemely at the least) by certaine superstitious and ceremoniall formes of words (called charmes) by them pronounced: or by medicines, hearbes, or other things applied above the course of nature, and by the Devils helpe, and covenants made with him.

Of this last sort likewise are Sooth-sayers, or Wisards, which divine and foretell things to come, by the flying, singing, or feeding of birds, and unto such questions as bee demanded of them, they doe answer by the Devill (or by his helpe) *sc.* they doe either answer by voyce, or else doe set before their eyes in glasses, Chrystall stones, or Rings, the pictures or images of the persons or things sought for.

Imbesilling of the Kings Majesties Ordnance, armor, shot, powder, or other habiliments for war, or victuals provided for souldiers, &c. if it bee by any person having the charge or custodie thereof, and to the value of xx.s. though at severall times, it is felony. 3 *1. El.* 4.

Imbesilling of any Record, or parcell thereof, Writ, Returne, Pannell, Processe, or Warrant of Attourney in the Chancery, Exchequer, Kings Bench, Common place, or Treasure, (by reason whereof any judgement shall bee reversed) it is felony in the parties, and in their counsellors, procurers, or abettors.

So the raising of such record, is felony (within the said stat. of 8. *H. 6.*) yet if a Judge doe imbesill or raise a Record, this is but misprision in the Judge. 2. *R.* 3. *Br Cor.* 174. & *Treason* 31.

But it seemeth the Justices of peace have not to doe with these two last sorts of felonies, (*sc.* with imbesilling, or raising of Records) for that these

172. 33.

172. 12.
172. 13.172. 10.
172. 11.172. 12.
172. 13.172. 14.
172. 15.172. 16.
172. 17.172. 18.
172. 19.172. 20.
172. 21.

these felonies are committed to other Judges to deal with, by the same stat. of 8.H.6.P. *Records* 4. See before *tit. Felony, cap. 26.*

Egyptian; *sc.* if any person of the age of 14 years, or above, shall call himself an Egyptian; or shall bee in the company of such, or shall disguise himselfe in apparell, speech, or otherwise like such, and shall bee or continue in England one moneth, at one or severall times, it is felony, without benefit of Clergie. *St. 1.2.P. et M. 4.*

Note that these manner of persons, are besides all of them for the most part thieves, cutpurses, cozeners, or the like, and therefore the Just. of P. shall doe well to bee carefull, not onely in the examining of them, but also to cause them to be well searched for counterfeite Passes, stolne goods, and the like.

Every person which shall acknowledge any fine, recovery, deede inrolled, statute, recognisance, baile, or judgement, in the name of any other person, not privie or consenting to the same, being thereof lawfully convicted, shall bee adjudged a felon, without benefit of Clergy, &c. *21. Jac. Regis cap. 26.*

Forestalling, or buying any merchandise before they come to the Staple, &c. was made felony by the statute 27.Ed.3. *cap. 11.*

Forging of Evidences, *sc.* of any Deed, Charter, Obligation, Bill, Release, or other writing sealed, or of any Court Roll, or Will, or of any Acquittance; or to cause or assent to bee made any such forged writing; or publishing any such writing, knowing the same to be false, the second offence is felony without benefit of Clergy. But it seemeth also that the Justices of peace have not to deal with this, for that they cannot well take notice of the former conviction. See *Co. 9. 118. b. et hic antea, tit. Felony, cap. 20.*

Gaolers (by duresse of imprisonment, and pain) inforcing their prisoner to become an approver, (that is, an accuser of others as coadjutors with him in felony) this is felony in such Gaoler, although the app. plee, or party so accused, bee acquit, or shall happen to die before he be arrested upon the Appell, &c. *Stamf. 36. 14. E. 3. 10.*

If a Gaoler shall onely procure his prisoner to appell or accuse another offelony, this is felony, by *Scrop. An. 18. Ed. 3. Abr. d' Aff. 75. et Fit. Coron. 272.* And yet the statute of 14. Ed. 3. seemeth to extend onely where the Gaoler shall doe this by great duresse or paine.

Also by *Britt. f. 18.* if the Gaoler shall keepe his prisoner more strait than hee ought of right to doe, by reason whereof the prisoner dyeth, this is felony by the common law in the Gaoler. And herein the book called *Speculum Iusticiar'* agreeth with *Britton*. And yet by the statute of *Westm. 1. cap. 12.* notorious felons, and such as bee openly of evil name, or which bee rebellious, they shall have strong and hard imprisonment. *hic cap. 12.*

Hawkes: whosoever findeth any Hawke that is lost, if he shall not immediately bring the same to the Sherife of the same County, to be proclaimed, &c. but doth imbesill, & carry away the hawk, it is felony. *34. Ed. 3. 1. F. 1. 18. P. 1. 20.*

So is it in him whosoever taketh up any hawk, and concealeth the same from the owner, or his Faulkner; or that taketh away any hawk from the owner, or stealeth any hawk, and carrieth it away, not observing the aforesaid ordinance. *p. Hawks 2. 1. 18.*

1 H. 7. 7.
P. Fel. 14.
Lamb. 71.
Dyer 30.

Hunting of Deere or Conies in any parke, forrest, or warraine, unlawfully in the night time, or with visors, or other disguisings, and (upon examination by a Justice of peace, &c.) to conceale the offence, or any offender therein, is felony in such concealer: but if such offender (upon his examination) shall confesse all the truth, then hee is but fineable. See hereof *antea* *tit. Hunting*.

If any person to be arrested for such offence shall disobey the arrest, or if any person shall make rescous, so that the warrant (of the Justice of peace, &c.) for arresting them be not executed, it is felony.

Quare, if such hunting and concealment, or resistance, be felony where the offenders killed no Deere, &c. it seemeth no, for all the *Presidents* do run, *Occiderunt & asportaverunt, &c.* See *Lambert, Cromp. & West*.

Also *Quare*, if all such hunting disguised, or any other unlawfull hunting in the night time, bee not felony, although the offender bee never examined thereof, nor conceale the same as abovesaid. See the statute, 1 H. 7. cap. 7. *in fine*, where it seemeth that all unlawfull hunting in the night (generally) is felony.

3 E. 1. 10.
P. Fel. 4.

If any person shall take a tame beast, or other thing in a parke, by manner of robbery, it is felony: and the statute seemeth to bee but an affirmation of the common law in this point.

31. 11. 13.

Imprisoning, or taking against their wils (without lawfull authority) any subject, in Cumberland, Northumberland, Westmerland, and the Bish. of Duresme, and carrying them away, to make a prey of them:

Or to be privie, consenting, procuring, aiding, or assisting thereto:

Or to receive, carry, or give any consideration (called Blackmaile) for protection therein:

Or to burne any barne, or stacke of corne there: or to be aiding, procuring, or consenting thereto:

Every of these offences is felony, without benefite of Clergy, 43. *El. cap. 13.*

1 Jac. 11.
P. Fel. 4.

Marriage, *sc.* if any person being married, shall marry a second husband or wife, the first being alive, &c. it is felony; except notwithstanding where the husband or wife have beene absent seven yeeres, and the one not knowing the other to be living within that time; except also persons divorced, &c. by sentence in the Ecclesiasticall court; and except persons marrying within the age of consent.

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Multiplication of gold, or silver, or to practice that art, is felony. 5. *H. 4. 4. Vide Dyer 88. Pl. 105.*

Money called Galley Halfe-pence, Suskin, or Dotkin, and all Scottish mony of silver, to bring and put in payment any such, was made felony by the stat. 3 *H. 5. 1. & 2 H. 6. 9.* but they are now out of use.

Pyracie, concerning this offence, see the statute, 28 *H. 8. cap. 15. & hic antea* *tit. Pety Treason*.

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Plague, *sc.* if any person being infected with the plague, which being commanded by any officer to keepe his house, shall notwithstanding goe abroad, and converse in company, having an infectious sore upon him, it is felony.

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1.H.7.7.
P.Fel.14.
Lamb.71.
Dyer.50.

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Or to be privie, consenting, procuring, aiding, or assisting thereto:

Or to receive, carry, or give any consideration (called Blackmaile) for protection therein:

Or to burne any barn, or stacke of corne there: or to be aiding, procuring, or consenting thereto:

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1.Jac.31.
P.Fel.3.

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Poysoning, *sc.* wilfull killing of any person by poyson, is wilfull

murder in the offenders, their aiders, abettors, procurers, and counsellors, ^{P.Fel. 19.}
^{1. Ed. 6. 12. Co. 11. 31.} But the party poysoned must dye thereof within a ^{P.Mur. 4.}
 yeare and a day after the poyson received: see *antea* in the title *Murder*,
cap. 93.

Popish Priests, to receive, relieve, aid, or maintaine any such, &c. is felo- ^{P. J. 10. 12.}
 ny; see hereof *antea* tit. *High Treason.*

Popish Recusants, and such other Recusants or sectaries, which (by the ^{P.Fel. 4.}
 statutes of 35. *El. 1. & 2.*) are to abjure, if they shall refuse to abjure, or af-
 ter abjuration shall not depart the Realme according as they shall be ap-
 pointed, or after such departure shall returne againe without the Kings spe-
 ciall licence in that behalfe first obtained, it is felony without benefite of
 Clergy.

Purveyors, &c. if any Purveyor, Taker, or other person, their deputies ^{P.Fel. 19.}
 or servants, shall make any purveyance, takings, (or prises) for the Kings ^{P. Purv. 10.}
 Majesties house, of any thing above the value of xii. d. (2. & 3. *Ph. & M.* ^{Lamb. 401.}
cap. 6.) in any of the sixe sorts following: ^{Cromp. 41.}

1 Without warrant, or commission under the great scale, and doe carry ^{P. Purv. 14.}
 the same away against the will of the owner, it is felonie, 28. *E. 1. c. 2. 4.* ^{21. H. 6. 12.}
E. 3. c. 4. 36. E. 3. c. 2. (which warrant also they shall shew to the parties,
 before they doe take any thing from them.)

And note, that no such commission shall continue good, or be in force, a-
 bove sixe moneths; and they must be written in the English tongue, so
 that every man may understand them. See the Statutes 36. *E. 3. c. 2. 23.*
H. 6. cap. 1. & 2. & 3. Ph. & M. c. 6.

2 Or having a commission, shall buy or take (any thing) in other man- ^{36. H. 6. 12.}
 ner than is contained in their warrant or commission, *P. Purv. 19. fel. 25.* ^{21. H. 6. 12.}
Raft. 350. 36. Ed. 3. cap. 2.

3 Or shall take any carriage in other manner than is comprised in their ^{P. Fel. 19.}
 commission, *Stat. 36. Ed. 3. 2. P. 19. 23. H. 6. 1. 2.* ^{P. Purv. 19.}

4 Or having a commission, shall take and carry away any thing (above ^{36. E. 3. c. 2.}
 the value of xii. d.) against the owners wil, or not paying for the same pre- ^{Raft. 351.}
 sently according as they can agree; or if the buyer and seller cannot agree, ^{Cromp. 41.}
 then to take any thing without being praised by the Constable and foure
 townsmen, and by Indentures sealed by the Purveyor, &c. of the things so
 taken, &c. See the Statutes 5. *E. 3. 2. 10. E. 3. 1. 25. E. 3. 1. 36. E. 3. c. 2.*
2. H. 4. 14. & 20. H. 6. c. 8.

And yet, if it be but of the value of 40. s. or under, some doe hold that
 in this last case the Purveyor shall onely lose to the party grieved, the tre-
 ble value of his goods so taken, and his costs, and treble damages: and that
 it shall be at the election of the owner of the goods to recover his said
 dammages and costs, &c. either against the Purveyor, or against the neigh-
 bours, Prisors, and Townes adjoining, which being required, shall not
 resist the Purveyor or taker, doing contrary to the statute. See the Sta-
 tutes, 2. *H. 4. 14. 20. H. 6. 8. & 23. H. 6. cap. 1. & 2.* But *quere*, for all
 those former Statutes doe stand still in force, and be confirmed by these la-
 ter Statutes, and by the Statutes made 2. & 3. *Ph. & M. cap. 6.*

5 Or shall take more victuals or carriages for the Kings house, than he ^{P. Fel. 19.}
 shall deliver to the same house. *36. E. 3. cap. 4. Fitz. Just. of P. 114.* ^{P. Purv. 11.}

6 Or shall take any sheepe with their wools betweene Easter and Mid-
 summer,

P.Fel. 35.
P.Purv. 9.
25.E. 3. 15.

summer, at small prices; or more than be sufficient for the Kings house, and to carrie them to his owne house and sheare them. *Fitz. ibid.*

In every of these cases it seemeth to be felony in such Purveyor, their deputies and servants. And yet a Purveyor, or Taker, &c. may take victuall, or any such thing, according to his commission, at reasonable prices, to the use of the Kings majestie, and according to the statutes, although it be against the will of the owner. *Br. Purv. 1.* but then he must take it by the appreisement of the Constable and foure neighbours, &c. *in supra.*

And yet *quare* whether the appreisement shall be made by the Constables and foure neighbours, or by the Lords of the townes, or their Bayliffes; and also whether the said Indentures shall be made and sealed between the Purveyors and owners, or between the Purveyors and Preifors, &c. for therein the said Statutes doe somewhat differ.

CoL 146.

But if a Purveior shall take any provision for the Kings house, by force of his commission, and shall after sell away the same, now his first taking is become tortious, & he punishable as a trespasser, if not as a felon, *ab initio.*

If the Kings Hunters, or Faulkoners, shall take any thing against the owners will, without paying for the same presently, it seemeth to be felony, *36.E. 3. cap. 5.*

If the kings Purveiors, or takers of carriage, shall take any thing to spare another, they shall be imprisoned by the space of two years, forswear the Court, and pay treble dammages to the party grieved. *36.E. 3. cap. 3.*

36.E. 3. 1.
36.E. 3. 6.
36.E. 3.

If any subjects Chator, or other officer, shall take any victuals, come, hay, carriage, or other thing against the owners consent, or doe not pay for it presently, it is felony. *P. Purv. 1.* See the stat. *23.H. 6. cap. 14.* here before, *iii. Purveyors. cap. 44.* And *quare* if the felony of such Chator be not altered herein by that Statute.

11M cap. 12.
P.Fel. 27.

Rebellious and unlawfull assemblies of any persons, to the number of twelve or above, &c. their procurers or relievers, it was felony in them all. *Vide hic cap. 85.*

39.El. 4.
P.Fel. 34.

Rogues being by the Justices of peace, at their quarter sessions, adjudged incorrigible and dangerous, & therefore by them banished this Realme, if they shall returne againe into any part of this Realme without licence, it is felony.

1 Jac. 7.
P.Fel. 4.

Rogues, adjudged (as aforefaid) incorrigible, or dangerous, shall by the judgement of the same Justices, in their open sessions of the peace, be branded in the left shoulder, &c. And after such punishment, if any so punished shall offend againe in begging, or wandring, contrarie to the statutes of *36.El. 4.* or *1.Jac. 7.* it is felony.

36.El. 15.
Co. 11. 36.
P.Clergy 13.
2.Ed. 6. 9.
Lamb. 405.
36.El. 2. c. 1.

Robbing in the day time of any dwelling house, or of any out-house, belonging and used to & with any dwelling house, as a Barn or Stable, &c. (*uncore quere si ceo ouster l'offendor de son Clergy*) if it bee to the value of 5.s. or above, although no person be therein; or to rob any house by day or by night, any person being therein, and thereby put in feare; or to rob any person in any part of his dwelling place, or house, the owner or dweller, his wife, children, or servants being therein, or in any place within the precinct of the same house or dwelling place (sleeping or waking;) or to rob any booth or tent in a faire or market, the owner, his wife, children, or any servant being there within the same (sleeping or waking:) every of these

these offences are now by statute made felony, and as penall as Burglary, by the losse of the benefit of Clergy. But to breake a house in the day time, although he hath a felonious intent, yet if he carrieth away nothing, this is no felony: for there must be an actuall felony done, besides the breaking of the house in the day. And by the report of M. *Dalison* these statutes shall be strictly construed (in favour of life) and according to the bare letter; so that if the robberie be done by day, and there be in the house but one servant onely, or there be in the house, booth, or tent, but a stranger or sojourner only, the fact shall not be adjudged an offence against these statutes, *Crompt.* 118. See Ca. 11.
31, 32 & 36.
Standf 116.
Lamb. 361.

Servants imbefilling their Masters goods. See hereof *antea*, *iii.* 3. Jac. 4.
P. 1000.

Theft.

Souldiers, *sc.* if any subject shall passe out of this Realme, to serve any forreine prince, &c. not having before their passing taken the oath of allegiance, &c. before the officer thereunto appointed, it is felony.

If any gentleman, or person of higher degree, or any Captaine, or other officer in campe, shall passe out of this Realm to serve any forreine Prince, &c. or shall voluntarily serve any forreine Prince, &c. before they shall become bound to the Kings Majestie with two sureties (before the officer thereto appointed) with condition to this effect, *viz.* not to be reconciled to the Pope, &c. nor to make or consent unto any conspiracie against the King, &c. but to disclose all conspiracies upon knowledge thereof, &c. it is felony. *Ibidem.*

Souldiers entred of Record, and having taken preft money, or parcell of their wages of their Captain, if they shall not passe the sea, or goe with their Captain, or being in the Kings service shal depart without licence, it was made felony by the stat. 18. H. 6. c. 19. but see Co. 6. 27. that this stat. of 18. H. 6. 19. is now of little force, for that the ancient maner of retaining of Souldiers, to which this stat. hath reference, is now altogether changed, &c. And yet if a Souldier who is retained, or hath taken any preft money, shall at this day depart out of the Kings service without licence, it is felony by the Statutes 7. H. 7. 1. & 3. H. 8. 5. which two last mentioned statutes are yet in force, and are acts perpetuall, *Co. ibid.* And by the said statute of 3. H. 8. c. 5. such licence of departure must be made by the Kings Lievetenant. 18. H. 6. 19.
P. Fel. 39.
P. Cap. 3.
Co. 6. 27.

Souldiers, if they shall depart without licence, after they have served in the Kings wars, it is felony without benefit of Clergy; and none but the Lievetenant shall give a Souldier licence to depart. 2. E. 6. c. 2. Co. 6. 27. See 4. & 5. P. & M. c. 3. Raff. 46.

If any mariner or gunner, having taken preft wages to serve the King on the sea, shall not come unto, or shall depart from their Captain without licence, it is felony: yet *quare*, and see the stat. of 5. E. 1. c. 5. at large, for that it doth relate to the aforesaid statute of 18. H. 6. 19. which (as appeareth before) is now of little force. 5. E. 1. c. 5.
P. Fel. 39.

1 Souldiers, and Mariners, and all idle persons, wandring as Souldiers or Mariners, which shall not settle themselves to some lawfull course of life, but shall wander up and downe idly, or beg up and down, it is felonie in them, without benefit of Clergie. 39. E. 1. c. 7.

2 So it is if any idle or wandring souldier or mariner comming from beyond

yond the seas, or from the seas, shall not have a lawfull testimoniall under the hands of some one Justice of peace neer the place of his landing, setting downe therein the place and time of his landing, and the place unto which he is to passe, and a convenient time for his passage. 39. *El.* 17.

3 Or having such testimoniall, if they shall wilfully exceed the time therein limited, above 14. dayes. *ibid.*

4 Or if they shall forge or counterfeit any such testimonial, or shall have any such forged testimoniall, knowing the same to be forged, &c. *ibid.*

5 Or being retained into service after his arraignment, &c. if he shall depart within the yeare without licence of his master; in all these former cases, it is felonie in such souldier, &c. without any benefit of Clergy.

And yet see the statute of 43. *El.* 3. that souldiers and mariners, begging, or counterfeiting a certificate from their Captaine, &c. shall be adjudged and punished but as rogues. See *hic antea, tit. Rogues.*

Transporting or sending any live sheepe out of the Kings dominions; the second offence is felony.

It was made felony for any man to carry or to transport any wools, leather, woollfells, or lead, out of England, or Ireland; but see other statutes since made concerning the same. *An.* 38. *Ed.* 3. c. 6, 7. & 14. *R.* 2. c. 1. & 5.

Witches, see *Conjurat.*

Women, *sc.* to ravish a woman where she doth neither consent before nor after; or to ravish any woman with force, though she doe consent after, it is felony: and the offender shall have no benefit of Clergy. 18. *El.* c. 6. *Br. Cor.* 204. *vide Dyer* 202.

If a man take away a maid by force, and ravish her, and after shee giveth her consent, and marieth him, yet it is a rape.

Now Ravishment is here taken in one and the same signification with Rape, which is a violent deflowring of a woman, or a Carnall knowledge had of the body of a woman, against her wil. 9. *E.* 4. 36. *fi.* 1. 2. & *Co.* 1. 123.

A woman that is ravished ought presently to levie open huy and cry, or to complaine thereof presently to some credible persons as it seemeth. *Glanvile* 115. See the *stat. de officio Coronatoris*, 4. *E.* 1.

Fleta saith, that the complaint must be made within forty dayes, or else the woman may not be heard. *Lib.* 3. *cap.* 5. But in some other Countreies this ought to bee complained of the same day or night that the crime is committed, (*ut dicitur*) the reason is, *quia lapsu diei hoc crimen prescribitur.* *Minsb.*

And yet in an indictment of Rape, there is no time of prosecution necessary, for *Nullum tempus occurrit Regi.* But in case of an Appeale of Rape, if the woman doth not prosecute it in convenient time, shee shall bee barred.

If a woman at the time of the supposed rape doe conceive with childe by the Ravisher, this is no rape, for a woman cannot conceive with childe, except she doe consent. *Finch. lib.* 2.

And yet if a man ravish a woman, who consenteth for feare of death or dures, this is ravishment against her will, for that consent ought to be voluntary and free.

All such as are present, abetting, aiding, or procuring another to commit rape, are principall felons.

If a man and a woman be present, with purpose that the man shall by violence carnally know the body of another woman there also present, against her will, and the man doth the fact in the presence of the other woman, she so present (as well as the man) shall be a principall Ravisher; the man the agent, and the other coadjutant: And so one woman may bee a principall to the Ravishment of another. *Dod. 138.*

It is a good plea, in an appeale of rape, to say that before the ravishment supposed, she was his concubine, as *M. Braſſon* saith. Stamf. 14.

And yet to ravish an harlot against her will, is felony; for, *licet meretrix fuerit ante, certe tunc temporis non fuit, cum nequitia ejus reclamando consensire noluit. Braſſ. l. 2.* Comp. 47.

Also to take any maid, widow, or wife (having lands or goods, or being heire apparent to her ancestor) against her will unlawfully, is felony; and to receive any such woman so taken, knowing thereof, or to procure and abet the same, is felony; and they shall all be reputed as principals; and as well the principals, as accessaries before the offence, shall all lose the benefit of Clergy. *39. El. cap. 9.* 3. H. 7. b.
P. Fel. 16.

But this act doth not extend to any person taking any woman, only claming her as his ward, or bondwoman.

The taking away of a maid under sixteen years of age, without the consent of her parents or governors, or contracting marriage with her, or deflowering her, is no felony, but yet shall be punished with long imprisonment, without baile, or with grievous fine. 4. R. 2. P. 2. M.
P. Woma.
7. 1.
See Co. l. 15.
&c.

But unlawfully and carnally to know and abuse any woman child under the age of ten yeares, is felony, although such child consents before, *Crom. 47.* and the offender shall have no benefit of Clergy. 13. El. 5.
P. Fel. 14.

Also to take away a mans wife with the goods of her husband, whether it be against her will, or against her husbands will, seemeth to be felonie, by the *Stat. of West. 2. cap. 34.* the words thereof are, *De mulieribus abductis cum bonis virorum suorum, habeat Rex secliam de bonis sic asportatis.* 13. Alf. 6.
Br. Cor. 77.
Stamf. 24.
Cromp. 18.

But if the wife take her husbands goods, and so goeth away voluntarily with another man, and with those goods, or delivereth those goods to another man, these two last cases seeme not to be felonie. F. Cor. 485.
Stamf. 7.

If any woman be delivered of any issue of her body, male or female, which, if it were borne alive, should by the Lawes of this Realme be a bastard, and that she endeavour (privately, either by drowning or secret burying thereof, or any other way) so to conceale the death thereof, that it may not come to light, whether it were borne alive, or not, but be concealed; in every such case the said mother so offending shall suffer death as in case of murther, except she can prove that the child was borne dead. *21. Jac. Regis. cap. 27.*

Now the mothers prooffe that her childe was borne dead must bee by witnesses: And therefore if the mother will call for no helpe at the time of her labour, but secretly be delivered, and then the childe bee found dead, it is a strong presumption against her that she murdered it; and the rather, for that it is a received opinion, that if the childe were dead in her bodie, shee could not then bee delivered without the helpe of some others.

Accessaries.

Accessaries. CAP. 108.

IN high treason there be no Accessaries, for all the advisers, counsellors, ^{Intros.} ^{3.H.7.110.} ^{Stamf.40.} ^{Br.Treat.19.} persuaders, and assistants therein, be principals, and as much as if they were actors or doers: yea, all that shall advise, counsell, persuade, command, procure, or hire another to doe any treason or felony, (they being indeed the very cause of the fact) may well seeme as culpable, if not more, than the principall actor, for the rule is, *plum peccat auctor quam actor*; examples also we have hereof in the booke of God, *Gen. 3.* The serpent the procurer of the first sin, by Gods owne judgement, had a greater punishment, than the woman or man: Againe, *2 Sam. 12. 9.* David is told (from God) that he had killed *Urias*, whereas he onely commanded *Joab* to kill him, &c. yet in case of felony our law is otherwise.

^{Stamf.40.} Note whatsoever offence doth make a man accessary in felony, the same, or like offence, maketh him a principall in high treason.

^{Br.Cor.135.} ^{Erinn.} But yet it seemeth this is to be understood of accessaries before the treason, for receiving, aiding, and comforting a Traitor after the offence (knowing the same) was holden to be but misprision of treason, *12. & 13. El. Dyer 296.* And yet by some other authorities, the receiving of traitors after the offence, knowing thereof, is holden to be treason: see *3.H.7.10.* *Br. Treason 19.* *Hussey* Chiefe Justice, and *Cromp. 42. b.* who alledgeth the booke called *The Exposition of the termes of the Law, iii. Accessaries.*

^{Dyer 296.}

Sir Edw. Coke, l. 57. telleth us, that in the highest and lowest offences there be no accessaries, but all are principals; As in the highest offence, which is *Crimen laesae Majestatis*, there be no accessaries; And so in the lowest, as in Riots, Routs, forcible Entries, and other trespasses *vi & armis.*

In cases of *Premunire*, there may be Principall, and Accessary, by some opinions, *44. E. 3. & 8. H. 4. 6. b. Huls, Br. Premunire, 4. 6. Tamen quare,* for these offences seeme more like a trespassse than a felony, &c. And upon the stat. of *27. E. 3.* the offenders shall forfeit nothing if they appeare at the first day; but if they appeare not at the first day, then (for their contumacy) they shall be out of the Kings protection, and shall forfeit their lands and goods to the King, which are as a peine given by the statute, but it is no attainder: also if the Principall appeare not, or happen to be dead, yet the other shall answer; and therefore it seemeth that they be all principals in cases of *Premunire, Br. ibid. 4.*

In petty treason there is a principall, and there may be accessaries, as there is in felonies.

In felonie there be two sorts of accessaries:

In feloniam.

The one is accessarie before the felony committed.

The other is accessary after the offence done.

But he that is present at the time of the felony committed (be it in case of murder, robbery, burglary, or larceny) is a principall at this day if he were either a procurer, or mover, or be aider, comforter, or consentor thereto, although at that present he doth nothing: see before *cap. 77. Pl. 100. a. 11. H. 4. Br. Coron. 188. & 228. & Inditement 5.*

And

And yet concerning murder, note that in every appell, the count is, that every principall *lay comp'a, & ferust mortalmen, &c.* But those words are but words of form, and the striking of him which killeth the party shall be adjudged the striking of all those which command, procure, move, aide, or consent thereto, when they be present; and they which give the stroke or wound may be termed principals in fact, and the other being present, principals in law, see *Plow. fol. 97. b. & 100. a.*

If one being present at the killing or robbing of a man, doth nothing, yet ^{Stam. 40. b.} would have aided his companion, if there had been need, he shall be adjudged a principall. *Fitz. Coron. 309.*

But if one be present by chance, and seeth when another is slain, or robbed, or when any other felony is committed, and doth not come in company with the felons, nor is of their confederacy, although he doth not make any resistance, or disturb the felon, or levie huy and cry, nor discovereth the same, but concealeth it, yet it is no felony in him, but misprision of felony, and fineable, as a trespass. ^{F. Coe. 395. Stam. 37. 40. b. Cromp. 44. 14. H. 7. 31.}

Also in some cases a man may be a principall, although he be not present at the time of the felony committed: as if *A.* knowing drink to be poysoned, perswades *B.* to drinke it, and after *B.* (in the absence of *A.*) doth drinke it, and dieth thereof, *A.* is here a principall murderer, *Co. 4. 44.* See other like cases of poysoning, *antea tit. Murder. & postea sub hoc tit. Accessaries.*

Note that the accessary fact in felony, whether before or after, though it be another offence, and distinct from the principall fact, yet it is also felony; and they shall have the same punishment which the Principall shall have.

Note also when a statute maketh or ordaineth an Act or offence to bee treason, or felony, which was not so before by the Common Law, and yet the statute saith not that the abettors, aiders, comforters, or consenters to the doing thereof shall be also felons, yet it shall be felony in them, for that they were the causes of the doing or committing of the offence, which (it may be) otherwise had not beene committed. See *Lamb. pag. 279, 280. 19. H. 6. fol. 47. & 11. H. 4. fol. 13. Fitz. Coron. 228.*

And so it seemeth of receivers, &c. after the offence, *Lamb. 281.* for where a statute maketh any thing felony, it is made as felony to all intents and purposes.

The book called the *Mirror of Justices*, maketh divers maner of Accessaries: *sc.*

Those which command.

Those which counsell.

Those which consent.

Those which are partakers in the gain.

Those which know thereof, and doe not disturb or hinder the same.

Receivers knowing thereof.

(And those which are present at the fact: but these last (at this day) are Principals, as afore said.)

And now our bookes doe divide them into two sorts: *sc.* Accessaries before the felony (or fact,) and Accessaries after the fact.

Accessaries before the felony, are such as shall will, command, hire, procure,

Præcipiendo.
Peruadendo.
Consuadendo.
Consentendo.
do.

cure, move, conspire, counsel, abett, or consent to commit any petie treason, murder, robbery, rape, burglary, or larceny; but are not present thereat; yet all such are thereby felons, when the felony is committed.

But here note some differences are to be observed, when the principall and chiefe offender, or actor, doth not accomplish the fact altogether in the selfe-same sort, as it was before-hand agreed and plotted betweene him and the accessarie: and therefore if *A.* command *B.* to lay hold upon *C.* and *B.* goeth and robbeth *C.* this is no felony in *A.* (if he be absent when the robbery is done) for this commandement might have bin performed without any robbery.

F. Cor. 314. But if the commandement had been to beat *C.* and the partie commanded doth kill *C.* or beateth him so that he dieth thereof, *A.* shall be accessarie to his felony and murder; for it is hazzard in beating a man, that hee may die thereof.

Pl. 475. *A.* commandeth *B.* to rob *C.* and in attempting this, *B.* killeth *C.* *A.* shall be accessarie to this murder; for in attempting to rob *C.* the commandement of *A.* was pursued, and then when the commandement is pursued, and in the execution thereof another thing falleth out, he which gave the commandement, shall be adjudged a party thereto, for that his commandement was the cause thereof. *Pl. 475.*

He that commandeth or counselleth an evill or unlawfull act to be done, shall be adjudged accessary to all that shall ensue upon the same evill act, but not to any other distinct thing. *ibid.* As if

Pl. 475. *A.* commandeth *B.* to steale a horse, and he stealeth an oxe; or to steale a white horse, and he stealeth a blacke; or to rob a man by the high-way of his mony, and he robs him in his house of his plate; or to burn the house of *B.* and he burneth the house of *C.* these be other acts and felonies than *A.* commanded to be done, and therefore *A.* shall not be adjudged accessary to them.

Pl. 475. But if *B.* shall commit the same felony which *A.* did command or counsell to be done, though he doth it at another time, or in another place, or in another sort than *A.* did command or counsell, yet here *A.* shall be accessarie thereto; for *Mandata illicita recipiunt latam & extensam interpretationem. Vide Ba. 66, 67.*

As if *A.* doth counsell *B.* to kill *C.* by poyson, and hee killeth him with his dagger, or by other violence; or to kill *C.* by the high-way, and hee killeth him in his house; or to kill him one day, and he killeth him upon another day; in these and the like cases *A.* shall be accessary to the murder.

Lamb. 37. *A.* counselleth *B.* to poyson *C.* and to that end *A.* buyeth poyson, and delivereth it to *B.* who tempereth it in an apple, and delivereth it to *C.* with intent to poyson him, and *C.* knowing nothing, giveth the apple to *E.* who eateth it, and dieth thereof; here *A.* is not accessary to the murder of *E.* yet it is murder in *B.* *Pl. 475, 476.*

A. counselleth or commandeth *B.* to kill *C.* and after and before he hath killed him *A.* doth repent him, and countermands it, charging *B.* not to kill *C.* and yet after *B.* doth kill *C.* here *A.* shall not be adjudged accessary to the death of *C.* for the Law adjudgeth no man accessary to a felony before the fact, but such as continue that mind at the time that the same felony is done and executed. *Pl. 475.*

But

But if *A.* counselleth a woman to murder the childe in her bodie (when it shall be borne) and after the child is borne, and then the Midwife or other person, in the presence of the Mother, and by her commandement, killeth the childe, although it be done in the absence of *A.* yet he is accessary by his counselling it before the birth, and not countermanding it. *Dyer 186.* Dyer 186.
Co. 79b

A man foreknoweth of a felony intended to be done, and doth conceal it, and so suffereth it to be effected, this maketh him no accessary to the felony, except he consenteth thereto; but such concealment seemeth to be onely misprision of felonie, and finable; And yet the rule is, *Qui non prohibet, quod prohibere potest, consentit. Ideo quare.* Lamb. 37.
14 H. 7. 11.

Note that in manslaughter there can be no accessary before the fact; for manslaughter is upon a sudden falling out. Co. 4. 14.

Note also that none shall have his Clergie, which maliciously commandeth, hireth, or counselleth any person to commit any pettie treason, or wilfull murder, or to do any robbery, 4. & 5. P. & M. c. 4. See *Dyer 183. 186. & Co. 11. 35.*

Also none which is accessary before the fact, to any felonious burning of any dwelling house, or any part thereof, or barne with corne, shall have any benefit of Clergie. 1. E. 6. cap. 17. 4. & 5. P. & M. cap. 4. See *Co. 11. Poulsters Case.*

No horse-stealer, nor accessary thereto, either before or after (such felonie done) shall have any benefit of Clergie. 2. E. 6. cap. 33. & 31. El. 12.

After the
fact.

Accessaries after the offence, are they, who knowing that another hath committed a felonie, doe feloniously or voluntarily receive or harbour him, or relieve, assist, comfort, or aid him, whether it be before the attainer of the felon, or after his attainer. *Br. Indiement 4.* Stam. 41.

As to comfort or relieve a felon (before hee is attainted) with money, meate, drink, or lodging, knowing of the felony, maketh one accessary. 26. Aff. Pl. 47.

So to lend him a horse to goe his way withall, or otherwise to bee a meanes of his escape. *Fitz. Coro. 427.* Stam. 41.

But to relieve him being in prison, maketh not a man accessarie: Also to aide him by his good word, or suit for his deliverance, or to send a letter for his enlargement, this maketh not a man accessary to the felonie. *Finch.* Br. Cor. 109.

A felon that goeth under baile, and stands bound to appeare for his triall, to receive, harbour, or relieve such a one, with mony, or victuall, breedeth no danger of being an accessarie, because the felony in these last cases cannot be concealed, nor the triall hindred by it. Lamb. 38.
Crompt. 43.

A felon getteth his pardon, such as shall receive or relieve him after, shall not be accounted accessary; but to receive or relieve him before his pardon obtained, is felony. See *Pl. 476.* yet it seemeth upon this pardon, such accessary before, shall be discharged.

A felon is attainted by verdict, confession, or by utlary, to receive, harbour, or relieve such a one, by any person dwelling in the same Countie where the felon is attainted, it maketh such receiver or aider an accessary to the felony, although such receiver, &c. did not know of the felonie; because by the attainer of the felon hee is a felon of record, whereof every

F. Cor. 377.
Stam. 90.
Dyer 355.

every person dwelling in the same Countie is to take notice. Yet M. *Bra-
thon* requireth a more direct knowledge in the parties to make them acces-
saries; for albeit a Record (and especially the pronouncing of an utlary in
the Countie Court) be so notorious, that every man may easily come to
know the same; yet were it an over great extremitie, that every man
should (upon the perill of his owne life) take certaine knowledge thereof;
which opinion of M. *Bra-thon* M. *Lambert* also holdeth to be very reason-
able.

Lamb. 189.

F. Cor. 177.
Vs. Stam. 41.

But a felon attainted by verdict, confession, or utlary, in one Countie,
and another doth receive or aide him in another Countie, this maketh such
receiver, or aider, no accessary to the felony, unlesse hee did also know of
the felony.

F. Cor. 383.
Stamf. 16.
R. 43. f.

If a feme covert shall relieve, or receive, and keepe companie with her
husband, knowing him to be a felon, she is no accessarie thereby: for a wo-
man covert cannot be accessary in felony to her husband, for shee ought
to relieve him, and not to discover his counsell. But *quare* if this be not
to be understood of accessary after the fact; for if the wife shall procure,
counsell, or conspire with her husband to commit any felony, and the hus-
band thereupon shall execute the same, although the wife be not present
thereat, yet the wife may seem to be accessary to her husband in such case;
for M. *Bra-thon* saith, *Uxor virum accusare non debet, nec detegere factum
suum, neque feloniam; consentire tamen non debet feloniam viri sui, neque esse
coadjutrix.* Stamf. 26.

Also if the wife receiveth, &c. another felon, she is an accessary.

A servant may bee accessary to a felony committed by his master or
mistres, *sc.* by relieving or aiding them, or otherwise by being a meanes
of their escape, as it seemeth: for master *Bra-thon* saith, *Concubina & fa-
mula domus non sunt in eodem casu quo uxor, ipsa enim accusare tenentur,
aut recedere a servitio, alioquin videntur consentire.* Stamf. 27. a.

A servant knowing his master to be a felon, continueth to doe him ser-
vice, the servant is thereby an accessary, *Leff. M. Cock. Mardra. Hugh 10.*

The master knowing his servant to be a felon, still keepeth him in his
service, the master is thereby an accessary. *ibid.*

See Stamf.
41. c.
Such a mat-
ter.

A felon who fled to the house of his naturall brother, and the brother
shut the fore-doore against the pursuers, and conveyed the felon out of his
house at a backe doore, whereby he gat to the Church; this brother was
adjudged an accessary for it, for he was a meanes of the escape.

Quare if a felon flyeth, and commeth to his friends house, and his friend
shutteth the doore against him, and yet maketh the pursuers beleeve that
he is in the house, whereas he escapeth, if this make not the friend an acces-
sary.

3 H. 4.
21. Cor. 36.
See Br. 26.
41.

A man hath a felon in his house, and (knowing of the felonie) suffereth
him to goe his way, and so to escape, yet this is no felony, for that he had
not arrested him of the felony before: neither can such an escape make him
an accessary, except he were any meanes of the escape.

1 H. 4.
Stamf. 43. c.

If one doe rescue him that is arrested for the felony, he is a principall fe-
lon, and not an accessarie.

11 Aff. 69.
35 E. 3. 19.
3 H. 4. 41.
Stamf. 43. b.

Receiving, or buying of stoln goods, knowing they were stoln, maketh
not a man accessarie to the felonie, unlesse he receiveth also (or aideth) the
felon

Rescuing
Buying
Stoln goods

felon himselfe: yet M. *Crompton* maketh a *quare* thereof, and alleageth some cases to the contrary: See *Crompt. fol. 41, 42, 43.*

But herein there seemes a difference betweene a buyer (being a stranger to the felon, and who for valuable consideration shall buy such goods) and a receiver or buyer, who is an adherent or companion to the felon, or that by covin shall receive or buy such goods. See the preamble to the statute 2 & 3. *Ed. 6. ca. 24.*

A man buyeth stolen goods for 5.s. which are worth 20.s. this maketh the buyer an accessary, by the opinions of M. *Crom. fol. 43.* and of Sir *Nich. Hyde* in his charge at Lent Assises, at *Cambr. 1629.* for it may well appeare by the price, that the seller came not truly by them, and therefore it is safe to lay hold of such sellers, as shall sell any thing at any great under value. Crompt. 43

Taking a
game/stolne
goods.

A man pursueth and taketh a felon that hath stolne his goods, and then taketh his goods againe, and suffererh the theefe to escape, hee is no accessary thereby (by some opinions) for hee may *in initio agere civiliter*, or *criminaliter*, at his pleasure, as M. *Brañton* writeth, *Stam. 28. quare tamen*, for M. *Stamf. f. 40.* and M. *Finch, li. 2.* say, that if hee takes his goods againe from the felon to favour him, this is theftboot (the punishment whereof in ancient time was of life and member, though at this day it bee punishable onely by ransome and imprisonment:) And yet by some it is holden to bee felony at this day. The like seemeth to bee if he takes his goods againe from the felon, and then favoureth him, and letteth him goe. Br. Cor. 121
Lamb. 386
Crom. 37
41-42
P.R. 116
Termes of
the Law. 184
Dyer 50 a
Fitz. Cor.
355

But if the party robbed take money or other goods, &c. of the thiefe, to the end hee shall favour him, or shall not give evidence against him, whereby the theefe escapeth, now is hee an accessary to the felony of his owne goods, by good opinion; though some other seeme to take this for theftboot, and so to bee punishable at this day, onely by ransome and imprisonment, as aforesaid. 6.E.6.
Lamb. 386
Crompt. 41
P.R. 116
Br. Cor. 121

If the party robbed, or if he that shall have any goods stoln from him, after complaint by him made of the felony (to a Justice of peace or to the Constable) shall then take his goods againe, or otherwise bee compounded withall, and will not prosecute this matter against the felon any further, but will suffer him to escape, after hee was once so charged, and perhaps arrested for the same, *quare* if this maketh not him an accessary, for that hee did once *agere criminaliter*, by complaint made to the officer against the felon.

I thinke in such case the Justice of peace shall doe well (at least) to bind over both the one and the other to the next quarter Sessions, or to the next gaole delivery, and then to acquaint the Court with the whole matter.

But if upon huy and cry, a man doe arrest a theefe that hath stolne another mans goods, and doe then take the goods from the felon, and so let him goe, this maketh him an accessary to the felony, if not a principall felon. 25. Aff. 62
Lamb. 385

Note in all cases of an accessary after the fact, it is requisite, that the fact (to which hee is an accessary) bee a felony at the very time in which hee becommeth an accessary to it: for if A. giveth a mortall wound

Stam. 87. wound to *B.* upon the first of March, and *C.* knowing thereof, receiveth, &c. *A.* two or three dayes together, and letteth him goe, and after *B.* dyeth of the wound within the yeare, yet this receipt, &c. maketh *C.* no accessarie, because the principall fact was no felonie at the time either of the receipt, or of the letting him goe.

P. Trial 2.
Stam. 41 f.
43 b. By the stat. 2. Ed. 6. c. 24. accessaries may be to a felonie done in another county: whereas before that statute the common law laid no hold of such accessaries, for that those in another county, upon the triall, could not have constance of the principall offence, &c.

But now by the said statute there shall be a certificate from the *Custos Rotulorum* of the county where the principall shall be attainted or convicted, &c. See *antea*, tit. *Felonie*. cap. 20.

Lamb. 81.
Stam. 44. Note that if an offence be made felonie by statute, although the same statute doth not expressly make mention of procurers, counsellors, abettors, receivers, consenters, and aiders, &c. yet they shall be taken as accessaries (within the compasse of the same statute) even in the same manner, as if it were felonie at the common law.

26. Aff. 3.
F. Co. 196. A man may be an accessarie to an accessarie, as if he shall receive, relieve, or comfort him who is accessarie to a felon, knowing the same. *B. Cor.* 104.

P. Appeal 3.
Co. 41.
8. 117. 119.
Plow. 3. 92.
Co. 34. 107. Although the accessarie shall be punished, and shall have judgement of life and member, as well as the principall which did the felonie, yet the principall (yea all the principals) ought first to be attainted (by verdict, confession, or utlary) before the accessarie can be charged or put to answer (as an accessary:) and the acquittal of the principall, is the acquittal of the accessarie; for *ubi non est principalis, non potest esse accessarius*: but yet the accessary shall be attached and surely kept (and shall be committed by the Justice of peace, &c.) untill the principall be attached and attainted. See *Stat. West. 1. cap. 14.*

But though the accessory in felony cannot be proceeded against untill the principall be tried, yet if a man upon subtilty and malice set a mad man by some device to kill another, and he doth so, now forasmuch as the mad man is excused because he can have no will or malice, the Law accounteth the inciter as principall, though he be absent, rather than the crime shall goe unpunished. 33. *Eliz. Ba.* 57.

And if the principall be attainted, though erroneously, that shall not avail the accessarie, but he must answer, &c. *Co. 9. 68. b. & 119.*

Co. 44. 44.
P. Co. 166.
8. 178.
Vide Br.
Crom. 10. 71.
28. 83. 6.
137. 138. If the principall dye before he be attainted, or if the principall be found not guiltie by verdict, or be found by verdict that he slew the other in his owne defence, or if after conviction, by verdict, confession, or utlary, and before judgement, he hath his clergy, or getteth his pardon, the accessary in all these cases shall be discharged: but it is not safe for the Justice of peace to discharge such accessarie out of Sessions.

Crom. 34. b. A man killeth another *se defendendo*, or by misadventure, and it is so found upon his triall, the accessarie shall be discharged, for that in these cases the principall shall not have judgement of death; *Et omne accessar. sequitur suum principale*. See *Br. forf.* 13.

Rules concerning felony. CAP. 109.

IF a man committeth felony in the time of one King, he may be charged and arraigned for it after, in the time of another King. 1. E. 4. Br. Cor. 49.

If a man doe commit murder, steale goods, or doe any other felony in one county, and then flyeth into another county, and is taken there, and brought before a Justice of Peace there, he shalbe (by the Justice) imprisoned in the gaole of the county where he is taken; and after shalbe removed by the kings writ into the gaole of the county where he committed the felony. But for those that doe inform against such felons, the said Justice shall bind such informers over to appear, and to give evidence against such felons, at the next generall gaole delivery to be holden in that county where the triall of such murder or felony shall be; whither also the said Justice must certifie such information taken by him. 13. E. 4. Br. Eccl. 52.

If a man committeth a robbery, or stealeth a horse, beast or other goods in one county, and doth carry, leade, or drive the goods into another county, it is felony in every county whither hee doth carrie or drive those goods, and the offender may be indicted, or appealed of felony, or theft, and be arraigned, and have his judgement in any of those counties: but the offender cannot be appealed or indicted of robbery, but onely in the county where the robbery was done, for it is not robbery in any other county; for robbery must be done to the person of a man. *Br. Cor. 140. & Indisement 26.* 4. H. 4. 34. H. 3. Br. Cor. 47. Co. 72.

If a man doe steale another mans goods, and after another stealeth the same from him, the owner of the goods may charge the first or second felon at his choice. 13. E. 4. 4. H. 3.

Also if a man shall deliver cloth to a tailor to make a garment, if the cloth be stolen from the tailor, the offender may be charged and indited for stealing the same, either at the owners suit, or at the Tailors. P. R. 110. Cro. 70.

Also an indictment may be, *Quod bona & casalla cuiusdam hominis ignoti felonice cepit.* See here before cap. 103. And any man may in such case both informe the court, and by their direction may prefer an indictment against the felon, and give evidence to the Enquest therein. Dyer 29.

And so if the owner be known, but will not charge the felon therewith, any other person, (especially after proclamation made in the Court, that if any will inform or give in evidence for the king, he shalbe heard) may safely come in, and may informe the court, preferre an indictment, and give in evidence for the King, against the felon without any danger of conspiracie, because it is for the Kings advantage, to have the forfeiture of the felons goods: yea, in the two former cases, if the Justice of peace shall heare of any person that can informe any materiall thing against such a felon; or against any felon, the Justice in his discretion may send for him, take his information, and may bind him to give evidence against such felon: for every one shall be admitted to give evidence for the King. *Stamf. 163.* 35. H. 4. 15. Fitz. Co. 5. Fitz. 85. Stamford 171.

Also if any robbery or theft be committed, and the party robbed or other owner of the goods will not charge the felon therewith, yet it seemeth every Justice of peace may cause such felon (or any person suspected for such felonie) to be apprehended, and may examine them thereof; and

and also may send as well for the partie robbed, &c. as for all such other persons as can informe any thing materiall concerning the said felonie, and may take their informations (upon oath) and if upon such examination they shall find cause, the said Justice may commit the offenders, and binde over the informer. See *antea*, in the other title of *Felonie cap. 20.*

3. E. 2. c. 9.
P. Fel. 28. &
Huy & cry 1. Note also (for the better prevention and apprehending of Felons) that *Huy and cry* upon all homicides, burglaries, robberies, and other felonies, & when men are put in great danger, huy and cry shall be levied, and every man shall follow the huy and cry, and whosoever doth not, and be thereof convicted, shall be attached to appeare before the Justices of Gaole delivery: Also it seemeth any Justice of peace may binde them over to appeare before the Justices of gaole deliverie, and that by force of the commission of the first *Affrig.*

3. Ed. 1. c. 9. Yea, upon any felonie committed, all men generally shall be ready (at the commandement of the Sheriffe, and at the cry of the country) to pursue and arrest felons, upon paine to be grievously fined.

31. E. 3. c. 1. 2.
37. El. 11.
38. E. 3. c. 11. And such huy and cry and pursuit shall be made from town to town, and *Escape* from country to country; and shall be made by Horse-men and foot-men: and in case of robbery if (after notice thereof given to some dwelling neer) none of the felons be taken within forty daies after the felony committed, then the whole hundred where the robbery was done shall answer for the robbery done, and the damages: but yet the inhabitants of any other hundred wherein negligence, fault, or defect of pursuit and fresh suit shall happen to be, shall answer and satisfie the one moitie, and halfe of all and every such summes of mony and damages. See more here before, *tit. Huy and Cry, and Robberie.*

3. E. 2. c. 9.
37. El. 11.
38. E. 3. c. 11.

3. H. 7. c. 1.
Co. 7. a. b.

And if a man be slaine in the day time, (*sc.* so long as it is full day-light) in a town not walled, and the murderer escape, the whole town where the murder was done shall be amerced for this escape. But if it be in a City or towne walled, then if the murder, &c. were by night, or by day, they shall be amerced for the escape. *Fit. Co. 238. 293. 299. 302. Stam. 33. l. 3. H. 7. 1. P. Coroners 13.*

And if a man be slaine in the day time, out of any towne, then the hundred shall be charged therewith, and for the insufficiency of the hundred, all the county shall be charged, &c. *Stamf. 34. f.* yet see *Dyer 210. b.* that the towneship shall be amerced for the escape, although the murder were committed in the fields of the towne, or in a lane, &c. And the Justices of peace are to enquire of such escapes, and to certifie the same into the Kings Bench. *P. Justices 19.*

P. 1034.

Also every man is a sufficient Bayliffe and officer to apprehend him that is pursued by huy and cry; and if he be taken with the thing supposed to be stollen, though he neither be of evill name, nor a stranger, yet every man may commit as well such suspected person, as also such goods, to the town where they be apprehended, to answer to the King according to the law; and the Constables of the town are to carry before some Justice of peace, as well such prisoners, as also the bringers, that the Justice may take their information against such prisoner, and may examine and commit such offender, or person so suspected.

But if a man doe levie Huy and Cry upon another without cause, both the

the one and the other shalbe attached, and carried before a Justice of P. to answer it, as disturbers of the peace, and be bound to their good behavior. ^{sup. cap. 75.}

Note also that the Kings officer may breake open any mans house, to apprehend any felon, or any person that is suspected of felony, being in the said house. See hereof *antea*, iii. *Forcible Entry*. cap. 78. ^{9 Ed. 4. cap. 2.}

Also the high wayes are to be enlarged, and to be cleansed of all Bushes, woods, and trees, &c. whereby such offenders may lurke or escape. See *antea*, iii. *Highwayes, and Robberie*.

And for the better detecting and apprehending of such offenders in great townes being walled, the gates are to be shut from the Sun setting, untill the Sun rising: and no man shall be lodged in the suburbs from nine of the clock untill day, unlesse his host will answer for him: And in all other townes watch shall be kept from the Feast of the *Ascension*, untill *Michaelmas*, from the Sun setting, untill the Sun rising; And if any stranger doe passe by them, he shall be arrested untill the morning, &c. And if they will not obey the arrest, then all men shalbe ready to follow with huy and cry, untill such night-walkers shall be taken; And for such arrests none shalbe punished. And the Constables ought to see these watches duly set and kept: and as well the Constables of Hundreds, and of franchises, as also the petty Constables of townes, ought to make presentment to the Justices of peace at their sessions, (and to all other Justices thereto assigned) of the defaults of watches, and of such as lodge strangers, for whom they will not answer: and the Justices of peace at their Sessions, shall punish such as be found in default. *P. Watch 2.* See *antea*, iii. *Watch*, that every Justice of peace may cause these watches to be duly kept. ^{13 E. 1. 4. P. Watch 1. 5. H. 7. 5. a. Lamb. Off. of a Constable.}

The forfeiure for Felonie. CAP. 110.

THe punishment of every person attainted of felonie, is fourfold; *sc.* ^{Co. l. 114. Co. l. 46.}
 1 The offender shall lose his life, and be hanged betweene heaven and earth, as unworthy of both.

2 He shall lose his blood, as well in regard of his ancestrie, as of his posteritie; for his blood is corrupted, so as he hath neither ancestour, heire, nor posteritie. See *Co. 11. 1. b. & Lin. 745. & c. Co. l. 391, 392.* ^{Ibid.}

3 He shall forfeit his fee simple lands (from the time of the offence, &c.) wherein the King shall have *Annum, diem, & vastum*, to the intent that the offenders wife and children shall be cast out thereof, his houses rased, his trees rooted up, his meadowes plowed up, and all his land waisted and destroyed. And after the yeare, day, and waft, the lands shall goe by escheat to the chiefe Lord of the fee: (But yet the lord may fine with the King for all, *sc.* for the yeare, day, and the waft, and so have the land presently) *quare* if the Lord may enter, it seemeth he cannot: see the stat. 17. E. 2. c. 16. & *Stamf. de Prer. 49. Fitz. Tra. 48. & Br. Reserf. 36.* ^{Ibid. Stat. Prer. Reg. cap. 46.}

4 The offender shall forfeit and lose all his goods and chattels from the time of his attainder onely.

The King shall have all the goods of felons which be condemned, and which bee fugitive, wheresoever the said goods be found, *sc.* all their goods moveable and unmoveable, their corne growing, and the profits of their fee simple lands for a yeare and a day, and the issues and profits of their

Co.3.34.
F.Co.3.17.
334.
10.11.647.
Dyer 30.

their other lands, during their lives, and all their debts due to them by statute, recognisance, obligation, or simple contract, and money due upon accounts: and the King, or he to whom the King shall give such debt, shall have an action therefore in his owne name, and yet the King shall not pay such debts as the said felons did owe.

Uncore le offender ne forfeiture ses terres, pur Manslaughter; Nec in cases de Homicide per Misadventure (in sesans chose loyall.) Nec pur Homicide sur Necessity, ou se Defendendo.

22. Alf. 96.
Br. for. 33.
41. E. 3. 24.
Br. for. 7.
9. H. 4. fo. ult.
Stam. 192.

By the Common law, after a felon be found guiltie before the Coroner, or that it be found before the Coroner, that he did flie for the felony, there the Coroner, Sheriffe, Undersheriffe, or Escheator, &c. may (for the King) seise the goods of the felon, and preise them by an Enquest, &c. before his attainer; for by such thing found before the Coroner, the goods of the felon are forfeited without further enquire, or triall of the felon: and yet the officer may not in such case carry the felons goods away, but (after preisement as aforesaid) must leave them in the custody of the felons neighbours where hee dwelt, or in the custody of the towne where the goods were, to be answered to the King: and if he were indited of felony, yet his goods should not be removed out of his house until he were attainted, but the officer was to seise and preise them, and to take surety of the party that they should not be imbecelled; and if the party would not find surety, then the officer was to deliver them to the neighbours, and the said goods should be kept by his neighbours all the time of his imprisonment; and the felon must have had reasonable maintenance of his goods for him and his familie, untill he were convicted and found guilty of the felonie, and then the remainder was the Kings. See 25. E. 3. c. 14. P. Ind. 5.

Pl. Sherif. 34.

P. Indict. 5.

Stam. 193.

And now by the statute made 1. R. 3. c. 3. it is ordained, that if any Sheriffe, &c. or other person, doe take or seise the goods of any person arrested and imprisoned for felony, or suspicion thereof, before the same person be convicted or attainted of such felony, or that the same goods be otherwise lawfully forfeited, he shall pay to the party grieved the double value of the goods so taken or seised, &c. which statute seemeth to be but a confirmation of the common Law, saith M. Stamf. fo. 193. save that it giveth the party grieved a more ample recompence, and more speedy remedy, than the common law before did: so that before attainer, or conviction, the goods of a felon that is in prison, ought not to be seised, nor committed to the Towne, nor taken out of the felons house or possession: for a man attainted of felony, shall forfeit such goods as hee hath at the time of the attainer, and not at the time of the felony committed: and a felon or traitor, after the felony or treason committed, and before attainer or conviction and judgement given upon him, may sell (*bona fide*) for his sustenance, &c. his goods or chattels, be they reall or personall; but yet they may not disorderly sell or waste their goods. Therefore it seemeth, that the officer may still take surety that the goods be not imbecelled, and for want of sureties, may seise them, and preise or value them, and then deliver them to the Towne safely to be kept, untill the offender be convict, or acquitted. See Br. for. 44. where M. Brooke delivers his opinion, that this order ought to be observed of every one which committeth felony, untill he be attainted.

Br. for. 58.
Co. 3. 171.
Stam. 192.

Nay after attainder, if they shall grant their goods or lands, it shall bind all persons except the King, and Lord by elcheat; but against them such grant is void. And as to their lands, relation is to be had to the day of the felony committed, by the attainder, by verdict, urlary, or otherwise: *Stam. de Prærog.* 48.

After the conviction of a felon (if the goods were in the felons possession at the time of his conviction) the town presently stands charged therewith, and shall answer for the losse, or impairing of them, though the goods were never seised by the officer, nor delivered to the towne, (except they can shew what other person hath detained those goods, and that they could never have possession of them; which exception is by stat. of 31. E. 3. 3. *P. Escheats* 3.) So that it shall be safe for the towne to seise such goods (in whose hands soever they be found) presently after the conviction of any felon, and then shall it be safe for them to doe it by inventory, taken in the presence and by the testimony of some other honest men. Yet *quære*, for by the opinion of *Prison*, none may seise any goods for the King, but an officer who is accountable to the King. 49. *H. 6. 1. Br. Reseiz.* 15.

Conviction. Conviction in felony, is where a man (being indicted of felony) upon his arraignment submitteth himselfe to be tried by the Countrey, and then is found guilty by the verdict of twelve other Jurors; or shall confesse the offence upon his triall, or is outlawed for the same (*sc.* is pronounced outlawed of the felony, at the County Court.) Also conviction in all other offences, (by the Common law) is where the offender is indicted, or the offence presented by a Jurie, whereto the offender pleaderth, *Not guilty*, and is found guilty by the verdict of twelve other Jurors, or by a second Jury, &c.

And yet a Popish Recusant indicted therefore (at the generall gaole delivery, or quarter Sessions for the peace) and proclamation there made, commanding the offender to render his body to the Sheriffe of the same county, &c. if at the next gaole deliverie, or Sessions, the same offender so proclaimed shall not make apparance of record, such default recorded, shall be a sufficient conviction in law of the said offence. 29. *El. cap. 6. & 3. Jac. 4. P. Recusants* 13. 42.

And sometimes (in other cases) upon proclamation made, if the partie shall not appeare and yeeld himselfe, he shall be thereby convicted or attainted of the fact, &c. see the stat. 5. *H. 4. cap. 6.* 11. *H. 6. cap. 11.* 13. *H. 4. cap. 7.*

And (by divers Statutes) you shall finde that an offender may be convicted (out of Court,) either upon the view and Record of the Justice of peace, or by the confession of the offender, or upon examination of witnesses before one or two Justices of peace, and that out of the Sessions. See here *antea cap. 66.*

And sometimes, conviction may be in the Sessions, upon the certificate, or presentment of the Justices of Peace. See *iii. Ale-houses, and High-ways.*

And sometimes by confession, or examination of witnesses in court, without any verdict taken. See *Crom. 130, 131. B. Confess.* 32.

And in some cases conviction shall be taken for attainder. See *Co. 11. 59. 60.*

The

Cor. 11. 58.
Stat. 1. 14.
& 15. b.
Col. 30. b.

The difference betweene attainer, and conviction, in case of felony, is, the person attainted hath judgement of death given upon him: the person convict, before judgement prayeth his Clergie, and hath it, &c. Or after verdict, confession, or outlary, the felon is said to be convicted, til judgment be given.

And so a man is properly said to be indited, when the offence is first found by the great Enquest, or other Jurie of Enquirie.

2 Convicted, when the offender, having put himselfe upon his triall, is found guiltie by a second Jurie; here he is convict, before he hath judgement.

3 Attainted, when (after such conviction) Judgement is given against the offender; and thereby his lands are forfeited, and his blood corrupted, *Co. l. 391.*

Examination of felons, and evidence against them. CAP. III.

2. & 3. Ph. &
M. 10.
P. Just. 108.

WHen any person shall be brought before a Justice of peace for murder, manslaughter, or any other felony (wherewith the Justice of peace may deale) or for suspicion thereof, before the Justice shall commit or send such offender to prison, hee shall take,

1 The examination of such offender.

2 The information of such as bring him, *viz.* he shall take their examination, and information of the fact, and circumstances thereof: And so much thereof, as shall be materiall to prove the felony, hee shall put in writing within two dayes after the said examination.

3 Also the same Justice of peace shall bind all such by Recognifance, as doe declare any thing materiall to prove the felony, to appeare at the next generall gaole delivery (to be holden where the triall of the said felony shall be) then and there to give in evidence against such offenders. See *antea, tit. Felony. cap. 20.*

4 And then the same Justice shall make his *Minimus*, to carry the offender to the gaole.

1. & 2. Ph. &
M. 11.
P. Just. 107.

Or if such offender be baileable (and that there be two Justices of peace present together, the one of them being of the *Quorum*) after such examination and information taken, and put in writing, the said Justices of peace may baile such prisoner.

5 And the said Justice or Justices of peace shall certifie at the next generall gaole delivery, such examination, information, recognifance, and bailement.

And if any Justice of peace shall offend in any thing contrary to the true intent and meaning of either of these statutes of 1. & 2. and 2. 3. Ph. & M. the Justices of Gaole delivery in their discretions, shall fine every such Justice of peace.

And yet for pettie Larcenies, and small felonies, the offenders may bee tried at the quarter Sessions, and the examinations and informations may be certified thither, and the Informers bound thither. See hereof *antea tit. Felony cap. 20. & stat. 3. H. 7. cap. 3. & Fit. 251. f.*

The

The forme of the Recognisance, see *postea* iii. *Recognisances*, cap. 123.

The forme of the *Mittimus*, see *postea* iii. *Mittimus*, cap. 125.

The forme of the Bailement, see *postea* iii. *Bailements*, cap. 127.

If the offender upon his examination before the Justice of Peace, shall confesse the matter, it shall not be amisse that the offender subscribes his name or marke under such confession made by him.

If the offender confesseth the felonie before the Justice of Peace, and notwithstanding he lettereth him goe, without committing or bailing of him; this seemeth to be a voluntary escape, and so felony in the Justice. *Crom.* 39.44.

Also if any person shall be brought before a Justice of Peace, and charged with any maner of homicide (other than that which shall be done in the orderly execution of judgement) as if it were done *se defendendo*, or by casualty (which are not felonies of death) or done by an infant, a lunaticke, or the like; yet it is the Justices part, and safest for him to commit the offender to prison, or at least to joyne with some other in the bailement of him (if the cause will suffer it) to the end the party may be discharged by a lawfull triall. See *antea*, iii. *Homicide*. Lamb. 119.

The like is to be done, where any felony is committed, and one brought before the Justice of peace upon suspition thereof, though it shall appeare to the Justice, that the prisoner is not guilty thereof: For it is not fit that a man once arrested and charged with felony (or suspition thereof) should be delivered upon any mans discretion, without further triall. *Vide Crom.* 34. & *hic* cap. 106. in fine.

Evidence by the wife. The Justices of peace have authority (by the words of the statute) to binde by Recognisance all such as do declare any thing materiall to prove the felony, to give evidence against the offender: And yet the wife is not to be bound to give evidence, nor to be examined against her husband; for by the lawes of God, and of this Land, she ought not to discover his counsell, or his offence, in case of theft (or other felony, as it seemeth.) See *Stamf.* 26. b. Nay, I have knowne the Judge of assise greatly to disallow, that the wife should be examined, or bound to give in any evidence against others in case of theft, wherein her husband was a party, and yet her evidence was pregnant and materiall to have proved the felony against others that were parties to the same felony, and not directly against the husband. See *antea*, iii. *Accessarie*. 1. & 2. Pl. R. M. 17.

And Sir *Ed. Coke*, l. 6. b. saith that it hath been resolved by the Justices, *termino Pasch.* 10. 7a. that the wife cannot be produced, either against or for her husband, *quia sunt dua anime in carne una*.

And yet it was resolved by the Judges (in the case of the Lord A.) that in criminall causes the wife may be a witnesse against her husband, especially where shee is the party grieved: But that in civill causes shee cannot. 7. *Caroli Regis*.

The child. But for children, I finde in the booke of the discovery of Witches at Lancaster assises, *Anno Dom.* 1612. that the sonne and daughter of *Elizabeth Devise* a witch, were not onely examined by the Justices of peace against their said Mother, and the said examinations certified and openly read upon the arraignment & trial; but the daughter also was commanded, and did give open evidence against her mother then prisoner at the Barre. E. 4. b. 4. 2. G. 2. 3. 4.

I finde further in the said booke of the discovery of Witches, that two children, the one about nine yeares of age, the other of fourteene, did upon their oathes give evidence against the prisoners upon their arraignment. See the booke, *f. 4. l. a. b. K. 4. ab.* The like was done at Cambridge, at Lent Affises, *Anno Dom. 1619.* before Sir *Henry Montague*, Lord chiefe Justice of the Kings Bench.

Accusation or information by one that is decrepit or unable to travell, is good, and may be taken by the Justice of peace upon oath, and certified at the next generall gaole delivery, or Sessions of the peace, as the case shall require.

If one be an accuser upon his owne knowledge, sight or hearing, and hee shall utter the same to another, that other may be an accuser. *Dyer 99.*

Accusation by an approver. See hereof *1st. Bailement cap. 114.*

And note that an offender confessing any felony (upon Indictment or otherwise) against himselfe, may also accuse others of the same felony; and such accusation may be taken by the Justice of peace, &c.

Two informe against another in matter of felony, and they varie in their tales, (*viz.* in the day and place, when and where the Felonie was committed) such information is not much to be credited: See the storie of *Susanna*.

Crom. 100.

He that is examined, if part of that he speaketh be proved to be false, he is not to be credited in the residue of his information; and therefore wee shall find in *16. Ed 4.* that a man who was produced as a witness in the Chancery, in his deposition he was found to swear falsely in part, and thereupon his testimony was utterly rejected.

A man attainted of perjury, and the King pardons and restores him, &c. *quare* whether such a persons information shall be allowed against a prisoner; for the old saying is, Once forsworne, ever forlorne.

A man attainted of conspiracie or forgerie, shall not be received to give evidence, or to be a witness. See *Cromp. 127. b.*

But if one be brought before a Justice of peace upon suspicion of felony, although the information against the prisoner shall be by such witnesses, yet it seemeth safest for the Justice of Peace to take their information for the King, and to binde them over to give evidence, &c. and to commit the partie suspected, and upon the triall to informe the Justices of gaole delivery concerning the credit of those witnesses.

Concerning these accusers or witnesses, I have further scene two old verses in these words;

*Conditio, sexus, aetas, discretio, fama,
Et fortuna, fides, in testibus ista requires.*

And yet in case of felony, any man (though of no worth) may be allowed for a witness or prooffe.

By Go.'s law one witness shall not be sufficient against an offender, for any sin, trespass, or fault, *Deut. 19. 15.* And to the same purpose was the *stat. 25. H. 8. c. 14* And yet now by our law one witness is sufficient, where the triall is by a Jury, for they are all sworn to trie the particular matter wherewith the defendant is charged. So also one witness is sufficient to convict an offender before the Justice of peace in divers cases. *Vide hic cap. 66.*

When

When a prisoner shall be brought before the Justice of Peace, for felony, or suspicion thereof, but they that bring him, or first complained of him, will not, or cannot informe any materiall thing against the prisoner. See what the Justice of Peace shall or may doe, *hic cap. 20. & 109.*

And it seemeth fit, that the parties grieved be bound not onely to give in evidence, but also to prefer a Bill of indictment against the prisoner: and the other persons which can inform any materiall thing to prove the felony, may be bound to give in evidence only.

And for that men should be the readier & more willing to give evidence against felons, the statute made 21. H. 8. cap. 11. hath enacted, That if any man hath any goods stolne from him, if the felon be thereof indited, and after in any sort attainted, or arraigned, and thereof found guilty, by reason of evidence given by the party robbed, or owner of the same goods, or by any other by his procurement, (though the thiefe be not hanged, nor have judgement of death) then the party robbed (or owner of the goods) shall be restored to his said goods, by a writ of Restitution, though hee never made any fresh suit or huy and cry. Before which statute the party robbed could have no restitution, without suing of an appeale against a felon, and fresh suit made.

Also if the felon shalbe outlawed upon the indictment by means of the party robbed, or owner of the goods stollen, he shall have restitution of his goods, by a writ of Restitution, *ut supra. Ba. v. 76.*

And note that the Justices before whom any such felon shall bee found guilty (or otherwise attainted by reason of evidence given by the party so robbed, or owner, or by any other by their procurement) have power to award a writ of Restitution for the mony or goods stolne, directed to the party in whose hands the same goods are, &c. 21. H. 8. cap. 11. *Br. Restit. 22.*

Also the executors of the party robbed shall have restitution by force of this Statute, *viz.* upon evidence given by them, or by their procurement against the felon, whereby the felon is attainted or found guilty.

If a theefe doe rob or steale goods from three men severally, and he be indited of the robbing or stealing from one of them, and arraigned thereupon, in this case though the other two would give evidence against the offender, yet shall not they have restitution of their goods, by the meaning of that statute, for the felon is not attainted of any other felony, saving of that whereof he was indited. But if he be indited of all the three robberies or felonies severally, and arraigned upon one of them, and found guilty by the evidence given by one of the parties robbed, &c. Yet shall hee be after arraigned upon the other two inditements, to the intent hee also may be found guilty, by the evidence of the other two persons robbed, and that so they may have restitution of their goods stolne, according to the meaning of the said statute.

And if a man doe steale goods at divers times from severall men, and he is after attainted at the suit of one of them onely, for the goods stolne from him, but is not attainted at the suit of the others, by this attainder the felon shall forfeit to the King not onely his owne goods, but also the goods stolne from those other, at whose suit he was not attainted, though the felon had no properie, but onely a possession of those goods; and the property

property of the goods which remaineth in the right owner in this case is forfeited (by the owner) to the King, for default of the owners pursuing the felon.

Also if there be divers of the thieves, and but one of the principalls attainted (as before) yet it seemeth the party robbed shall have restitution.

But in these and the like cases of restitution, if the felon hath sold the goods in a Faire or Market overt, and after be attainted of the felony (upon evidence given by the party robbed) here the owner shall not have restitution: For by alienation in Faire or Market overt, the property of goods stolne are altered, 12. H. 8. 10. b. Yet if he that bought the goods in market were privie to the felony, such sale shall not alter the property, *quia particeps criminis*: See 33. H. 6. 7. Co. 3. 78. *Vide antea, tit. Horses.*

A man shall have restitution of money stolne, &c. though it cannot be knowne. *Br. Restit. 22.*

But if a man hath a horse or other goods stolen from him, and knoweth not by whom, if the felon waiveth the goods, flyeth, and escapeth, and the Kings Officers, or the Lord of the Mannor, &c. seise them, the party robbed shall have no restitution, for that he cannot indite and attain the felon: And yet if the felon had not the goods in his possession, and with him at the time when he fled (but had formerly left them elsewhere, *sc.* in the thieves own house or in any other mans house, or in the custody of any other, or had hid them) then are they no waived goods, nor forfeit, but that the owner may take them againe wheresoever he findeth them, without any restitution awarded. *Co. 5. 109.*

Also in the afore said book of Discovery of Witches, I observe one other thing, *viz.*

That Examinations taken by Justices of peace in one County, may be (by them) certified into another County, and there read and given in evidence against the prisoner. *2. 3.* And in such cases the examinations would be taken upon oath.

Crompt. 193. The offender himself shall not be examined upon oath, for by the Common law, *Nullus tenetur seipsum prodere*: Neither was a mans fault to be wrung out of himselfe (no not by examination onely) but to be proved by others, untill the stat. of 2. & 3. P. & M. cap. 10. gave authority to the Justices of peace to examine the felon himselfe. *Examination on certified.*

But it seemeth convenient, in cases of felony especially, that the information (of the bringers and others) which the Justices of peace doe take against the prisoner, be upon oath: otherwise upon the triall of the prisoner, such Information or Examination, taken by the Justice of peace, shall not be read or delivered to the Jurie, nor given in evidence against the prisoner upon his triall. And so was the direction of Sir Edward Coke, late Lord chiefe Justice (5. *Jacobi*, at Cambridge Sommer Assises) upon the triall of a felon: for (said he) in case of a trespassse to the value of two pence, no evidence shall be given to the Jurie, but upon oath, much lesse where the life of a man is in question. See *Lamb. pag. 210.* that hee hath heard the opinions of other Justices of Assise delivered accordingly. *Upon Oath*

Also if the Informers bee examined upon oath, then though it happen they

they should die before the prisoner have his triall; or if they shall not appear upon the recognisance, and give evidence against the prisoner (being laboured perhaps to absent themselves,) yet may their information be given in evidence, as a matter of good credit.

Also it is found by experience, that without oath many Informers will speake coldly against a felon before the face of the Justice of peace; yea, and will also speake very sparingly and coldly, upon their evidence given before the Judges of Assise; as I have observed in some, had they not been urged with their former information taken upon oath. For the labouring (by the offender and his friends) to such as are to informe and give evidence (both before the matter commeth before the Justice of peace, and after) is now growne over common and usuall.

Also *M. Brooke* (*tit. examination 32.*) is of opinion, that every examination ought to be upon oath: And so also is the practice of the Justices in the higher Courts at *Westminster*, in all their examinations of Summoners, Viewers, Sherifes, Clerkes, and other Officers, &c. Lamb. 29.

And here let me admonish all such as are to informe or beare witness against a prisoner, or any offender, before a Justice of peace, or other Magistrate, That they be well advised what they testify upon their oaths, knowing that in such cases, if either they should not speake the truth, or should conceale any part of the truth, they should offend against God, the magistrate, the innocent, the common-wealth, and their owne soules: *sc.* against

God, in despising of him, and belying the truth.

Magistrate, in deceiving of him, and causing him to doe injustice.

Innocent, in spoyling him of his name, goods, or life.

Common-wealth, *sc.* if the partie be nocent or guilty, and he clears him by false witness.

His owne soule, for it is perjurie in him, at least, in the presence of God and good men.

Whether Information, Evidence, or prooffe of Witnesses shall be taken against the King. CAP. 112.

IT seemeth just and right, that the Justices of peace who take information against a felon, or person suspected of felony, should take and certify as well such information, prooffe, and evidence, as goeth to the acquittall or clearing of the prisoner, as such as make for the King, and against the prisoner: for such information, evidence, or prooffe taken, and the certifying thereof by the Justice of peace, is onely to informe the King and his Justices of gaole delivery, &c. of the truth of the matter.

And *sr Ed. Coke* (at lent assises at Bury, *5. Jacobi*) advised a Coroner that he ought to have done accordingly, (as I have heard.)

But *quære* if the Justices of peace, or Coroner, may take upon oath such information, evidence, or prooffe as maketh against the king, it seemeth no.

Upon triall of felons before the Justices of gaole delivery, the said Justices will often heare witnesses and evidence which goeth to the clearing and acquittall of the prisoner, yet they will not take it upon oath; but doe leave such testimonie and evidence to the Jurie, to give credit,

OR

or to thinke thereof, as they shall see and finde cause.

Popham Chiefe Justice (at Cambridge Assises *tempore Eliz.*) committed one to prison, who upon the triall of a felon, called out, That he could give evidence for the Queene, and when he was sworne, he gave evidence to acquit the offender.

P. Armour.

But by the statute of 31. *El. cap. 4.* it was enacted, that such persons as shall be impeached for any offence made felony by that statute (being against imbeselling of armour, &c.) shall be admitted to make any lawfull prooffe that they can, by witnesse or otherwise, for their discharge and defence.

Stat. 141. b.

In 7. *H. 4.* we shall finde, that one of the Sergeants, as *amicus Curie*, and to informe the Court (that they should not erre) did shew his opinion to the benefit of a prisoner, upon the insufficiency of the indictment: the like is to be seene in *Brookes Case*, 28. *Eliz. in Banco Regis. Co. 4. 39.*

Co. 4. 39.

Cases of suspicion. CAP. II 3.

NOW upon the examination of Felons, and other like offenders, these circumstances following are to be considered:

1. His name, *sc.* if he be called by divers names.

His parents, if they were wicked, and given to the same kind of fault.

His ability of body, *sc.* if strong and swift, or weak, or sickly, not likely to doe the act.

His nature, if civill or hasty, witty and subtile, a quarreller, pilferer, or bloody-minded, &c.

His meanes, if he hath whereon to live, or not.

His trade; for if a man liveth idly or vagrant (*nullam exercens artem nec laborem*) it is a good cause to arrest him upon suspicion, if there have beene any felony committed. 7. *E. 4.*

2. Quality.

20. *Br. fx. imp. 22.*

His company, if ruffians, suspected persons, or his being in company with any the offenders. 7. *E. 4. 20.*

His course of life, *sc.* if a common Alehouse-haunter, or riotous in diet, play, or apparell.

Whether he be of evill fame or report.

Whether he hath committed the like offence before, or if he hath had a pardon, or beene acquitted for felony before; *Nam qui semel est malus, semper praesumitur esse malus, in eodem genere mali.*

So if he hath formerly abjured the Realme, or beene outlawed for felony, although he hath his pardon.

If he hath any blood about him, on his apparell, or that his weapon be bloody.

If any of the goods stolne be in his possession.

3. Markes
or

If any of the apparell of the party murdered be in his possession.

- Signes. The change of his countenance, his blushing, looking downwards, silence, trembling.
 His answers doubtfull or repugnant.
 If he offered agreement or composition.
 If he hath laboured his neighbours not to speak thereof.
 The measure of his foot, or horse foot.
 The bleeding of the dead body in his presence.
 If, being charged with the felony, or called theefe, he saith nothing. *F. Cor. 24.*
 If he fled, *faciatur facinus, qui iudicium fugit. Co. II. 60.*
 If he hides himselfe, or takes sanctuary.
 If hee lyes lurking in a place where hee hath nothing to doe.
 If he were the first that found the party murdered.
 Place, *sc.* if convenient for such act, as in a house, in a wood, dale, &c.
 Time, the yeare, day, houre, early or late.
4. The fact. Where the offender was at the time of the fact, and where the day or night before, his businesse and company there, and witnesse to prove all these.
 Manner, if willingly, by chance, or necessity,
 If former malice.
5. the cause. If to his benefit, or what hope of gaine.
 If for the eschewing of any hurt or danger.
6. The persons. *Agens*, if Principall or Accessary, *Enfant*, *Lunatique*, &c.
Patiens, if against the King, Common-wealth, Magistrate, Master, &c.
- A felon brought before a Justice of Pea. accuseth others, it is sufficient cause for the Justice to grant out his Warrant for the rest. See *postea*.
 A man going to execution accuseth another of felony, it is sufficient cause to arrest him. *F. Cor. 111.*
- Fama.* *Communis vox & fama*, that he did the offence, is sufficient cause of suspicion: *sc.* where such a felony is done, otherwise not. *Br. sum. in p. 16.*
- But yet for the better conceiving what may breed or give just cause of suspicion, marke some of *M. Bractons Rules*.
Oritur suspitio ex fama; Fama vero qua suspicionem inducit, oriri debet apud bonos & graves, (non quidem malevolos & maledicos, sed providas & fide dignas personas) idq; non semel, sed sapius: vana autem voces populi non sunt audienda. *Stam. 97.*
- And therefore where the common proverbe is, *Vox populi est vox Dei*, it should be, *Vox populi Dei est vox Dei*.
Si furtum in manu alicuius inveniatur, vel sub potestate alicuius, tunc ille in cuius domo vel potestate res furiva inventa fuerit, tenebitur, (nisi Warrantum invenerit, qui eum inde defendere possit) for as another saith, Cum adsunt testimonia rerum, quid opus est verbis. *Stam. 97.*
Si quis noctu cubaverit, in domo solus cum aliquo qui interfectus sit, vel si duo aut plures ibi fuere, & huiusmodi non levare, nec plagam à latronibus vel interfectioribus in defensione facienda accipere, nec ostendunt quis de se

Ibid.

se vel de aliis hominem interfecerit, his casibus mortem dedicere non possunt. Si quis in domum suam notum vel ignotum acceperit qui vixum ingredi visus est, vero postea nunquam nisi mortuum, dominus domus si tunc domi sit, vel alii de familia qui tunc interfuerunt, penam capitalem subibunt, nisi forte per patriam fuerint liberati.

Scamf. 97. & 179. Co. l. 6.

Sunt etiam quedam præsumptiones ita violentæ, ut probationem non admittunt in contrarium, ut si quis cum cultello cruento caput sit super mortuum, vel fugiendo à mortuo, et mortem confiteatur; quibus casibus non admittitur mortem dedicere, nec alia opus est probatione.

Sir Ed. Coke, l. 6. maketh three sorts of presumptions, viz.

- 1 Violenta, (as in this last former case) which he saith is plena probatio.
- 2 Probabilis, which (saith he) moveth little.
- 3 Præsumptio levis, seu temeraria, which moveth not at all.

*Coast. 30. a. vide.

And yet in cases of felony, &c. the confession of the offender, upon his examination before the Justice of Peace, shalbe no conviction of the offender, except he shall after* confesse the same again upon his triall or arraignment, or be found guilty by verdict of twelve men, &c.

To the like purpose also is the rule of the Civill law, *Si quis in Judicio sponte de seipso confiteatur, & postea maneat in confessione, satis est.* If any man in judgement do confesse of himself, of his own accord, and after doth perlever in his confession, it is enough, and such confession shalbe taken for an evidence of the crime.

But yet at Lent-assises at Cambridge, Anno quarto Caroli Regis, before Sir Fr. Harry, upon the arraignment of a prisoner for felony, his Examination, which was taken before the Justice of peace, wherein he had confessed the felony, was onely given in evidence, no other evidence then coming in upon his triall; And the prisoner upon that his owne confession before the Justice of peace, was found guilty by the Jury of life and death, and had judgement, &c.

Also, in cases of secret murders, and in cases of poysoning, witchcraft, and the like secret offences, where open and evident proofes are seldome to be had, there (it seemeth) halfe proofes, or probable presumptions are to be allowed, and are good causes of suspition and are sufficient for the Justice of peace to commit the party so suspected.

22. 4. 4. 5. H. 7. 4. Br. ex. imp. 4. 16.

But note (by the Common law) that in an action of false imprisonment, brought against the Constable (or other person that shall arrest another upon suspition of felony) it is no plea for them to say, that the Plaintife was suspected of Felony: but he must alledge, That there was such a felony committed, and that the plaintife was suspected for the same: for suspition onely, without a felony committed, is no cause to arrest another. Yet see the statute of 5. E. 3. cap. 14. that if any man have any evill suspition of any persons for felony, &c. be it by day or night, they shalbe incontinently arrested by the Constables of the townes, &c. and kept in prison till they be delivered by the Justices, &c. & hic cap. 118.

27. E. 4. 5. 31. H. 7. 19.

Also the defendant must alledge some speciall matter (in fact) to prove that hee who was arrested was suspected of felony, (as to say, that the party arrested is a man of evill fame, or a vagrant person, &c.) otherwise one man may arrest any other, yea every man in the towne

may bee arrested, when any felony is committed.

Mes quel est suffisient cause de suspicion, & quel nemy, serratrie per les Justices. si. 127.

Also the defendant must plead, that he himselfe had a suspicion of the plainrife: for if the Constable (or other person that shall arrest one that is suspected) doth not suspect him himself, it seemeth he may not arrest him, upon his owne authoritie; and yet by the opinions of *Keble*, *Vavasor*, and *Townsend*, as well the Constable, as others in his aid, may arrest one that is suspected of felony, upon the suspicion and complaint (made to the Constable) of the party robbed, *2. H. 7. 15. 16. Br. Faux Imprif. 14.* yet *alii è contra ibid. sc.* that the suspicion can extend to none other, but only to him that hath the suspicion, and *Br. 14. H. 8. 16. a.* accordeth: *samen quare*, for if felons may not be arrested or stayed, but onely by those that shall suspect them, and that others may not aid and assist the party that shall suspect another to have robbed him, many felons shall escape, and felons shall often goe unpunished. See *Pl. 46. a. & Finch 127.*

But now by the stat. 7. Jac 5. the Constable, &c. in the former cases, may plead the generall issue (Not guilty) and give the said speciall matters in evidence.

Also, if the Constable, or other person, shall arrest another upon suspicion of felonie, by vertue of a Warrant from a Justice of peace, such warrant shall excuse him, it being given in evidence, &c. *V. 1. postea in Warrantis.*

Bailment and Mainprise. CAP. 114.

Bailment, Mainprise, or Replevin, is the saving or delivery of a man out of prison, before that he hath satisfied the law; *sc.* by finding sureties to appeare at a certaine day, and to answer, and be justified by the Law.

And to this purpose these three termes (Bailment, Mainprise, and Replevin) be indifferently used in our statutes and bookes.

He that is bailed, is taken or kept out of prison, and delivered (as it were) into the hands of his sureties, who are reputed his gardians, and who may keepe him with them, and may imprison him, by some opinions: see 22. *H. 6. Br. Surety 8. & Mainp. 89.*

If the Mainpernors or sureties doe at any time, or in any case, doubt that their prisoner, or the party by them bailed, will flye, they may take him, and bring him before any Justice of peace, and upon their prayer, the said Justice of peace may and ought to discharge such sureties, and to commit the party to prison, except he shall finde new sureties, &c.

So if a prisoner be bailed by insufficient persons, the Just. of peace (*ex officio*) may cause him to finde better sureties, and may commit him till he shall so doe; for the stat. of *Westm. 1. cap. 15.* requireth that such as be bailed, be let out by sufficient surety. *P. Mainp. 2. Vide antea in. Surety for the Peace. cap. 70.*

If the prisoner cannot finde sufficient sureties, the Justice of peace is not bound (nay ought not, knowing their insufficiency) to let the prisoner to baile. See *Co. 10. 101.*

And

And therefore, although the number of such sureties, their sufficiency, and the sum wherein they shall be bound, resteth (in some sort) in the discretion of the Just. yet it is safe for them to take two sureties (at the least) and those to be Subsidie men, and to be bound in good summes, especially if the prisoner be in for felony, or suspicion thereof: for the more, and the more able that the sureties are, the rather they will cause him that is bailed to appeare. And againe, for want of taking sufficient baile, the Justices of peace are fineable: And at Cambridge Assises *An. Dom. 1613.* Judge Warbenton threatned to have set 40. *li.* fine upon two Justices of peace, who had bailed a prisoner (that was committed for suspicion of felony, and appeared not) for that the sureties were not subsidie men.

And it seemeth that the Justices of peace may examine upon their oaths, the sureties, concerning their sufficiency, or whether they be subsidie men. The Justices of the Common Place (7. H. 6. 25.) did examine the ability of the Sureties upon their oaths, &c. and that which the higher Courts do may be a good rule for others. *Vide 2. H. 7. fol. 1. & hic cap. 69.*

Now bailment by the Justices of peace (in case of felony, or for any other matter) is alwayes upon a certain summe of mony (as upon 40. *li.* &c.) the which summe the sureties &c. shall forfeit to the King, if the prisoner appeareth not at his day.

Also, the bailment in felony is, *Ad standum reum de latrocinio pradiato secundum legem, &c.* Which seemeth to imply, that they which have taken him to baile, shall not onely cause him to appeare, but also to answer to the felonie. *Stamf. 77. d.*

And in this businesse of bailment (being a matter of much weight) it becometh the Justices of peace to be very circumspect, as well for feare of wrong, by denying it to him that is baileable; as also for feare of danger to the service it selfe, by yeelding it where it is not grantable; and for feare of danger to themselves in both cases.

For whosoever doe detain prisoners who are baileable, after they have offered sufficient sureties, shall be grievously amerced to the King; and he that doth take any reward for the deliverance of such, shall be amerced to the King, and pay double to the prisoner.

So on the other side, if one who by the law is not baileable, shall be let to mainprize, this shall be adjudged a negligent escape in him or them that do let him to mainprize; and for such an escape or offence, they shall be fined, and punished as followeth.

If the Sheriffe, Constable, or any bailiffe of fee, who hath the keeping of prisoners, shall baile any person which is not baileable, and be therof attainted, they shall lose their fee and office for ever: & if the under-sheriffe, constable, or bailiffe of such as have fee for keeping of prisoners do it contrary to their masters will, or any other Bailiff: being not of fee, they shall have 3. years imprisonment, & make fine at the kings pleasure. *DoH. & Stu. 135.*

Note, that the Sheriffes, and other officers which doe let to baile any persons forbidden (by the statute of *West. 1.* made 3. E. 1. cap. 15.) to be bailed, shall be punished by the Justices of Gaole delivery, according to the forme of the same statute; or else by the said Justices they may be put to their fine, as for an escape punishable at the Common law. 25. E. 3. 39.

Quare if it be not felony for them to baile felons, or persons suspect for felony, for that these Officers have no authoritie at this day to baile such prisoners, & *vide hic cap. 106.*

Now what persons be forbidden to be bailed by the said statute of *West. 1.* see *postea sub hoc tit.*

Note also, that the Sheriffe or Constable might at the Common law have bailed a suspect of felony (because they were conservators of the peace) but now that power seemeth to be transferred to the Justices of peace onely. See the stat. *1. R. 3. c. 3. & 3. H. 7. 3.*

By the Justices.

If any Justices of peace doe let to baile or mainprise any person, who (for any offence by him committed) is declared not to be baileable, or forbidden to be bailed by the afore said stat. of *3. Ed. 1.* the said Justices of peace so offending shall pay such fines, as shalbe assessed by the Justices of gaole delivery where the offence shall be committed. *Fitz. 251. i.* See *hic cap. 106. in fine.*

But the Justices of peace and Coroners, within London and Middlesex, and in all other Cities, Boroughs, and townes corporate, have authoritie to let to baile felons, and prisoners, as they have formerly accustomed. *P. Just. 107.*

If the Sheriffe, Justice of Peace, or other officer, shall baile one that is not baileable, such bailment being against Law, *quare* if the Recognisance or bond taken upon such bailment (for the appearance of the prisoner) be not void. See the opinion of *Moile, 37. H. 6. 1.* and of the Court there, that such a bond taken by the Sheriffe is void.

Now to shew further the authoritie of the Justices of P. in this behalfe.

The manner.

No person arrested for manslaughter, or felony, or suspicion thereof (being baileable by the Law) shall be let to baile or mainprise, by any Justice of peace but in open Sessions, or by two Justices of peace at the least, whereof one to be of the *quorum*, and the same Justices to be present together, at the time of the said bailment.

And this bailment the said Justices shall certifie in writing (subscribed with their hands) at the next generall gaole delivery, &c. *Vide antea tit. Examination of Felons, cap. 111.*

Also before the bailment of such prisoner, the same Justices, or one of them, shall take the examination of the prisoner, and information of them that bring him, of the fact and circumstances thereof, and so much thereof as shall be materiall to prove the felony, shall put in writing, before they make the bailment: which examination, information, and bailment, they shall certifie at the next generall gaole delivery, *ut supra.*

But if any Just. of P. hath taken the examination of a felon, and information against him, and after hath sent him to the gaole, now upon bailment of him by other Just. they need not to take any new examination of the prisoner, or information against him; but under their recognis. (or together therewith) to certifie by what Just. of P. the felon was committed, to the end that at his hands those examinations and informations may be required, if he have not certified them.

By the opinion of *M. Cromp.* a prisoner (taken for felony) before his commitment, ought to be examined, and bailed by two Justices of peace being

being together (as before :) but after that the prisoner is examined, and once committed, then he may be bailed by any one Justice of peace: *quare* thereof.

The Justices of Peace which shall send any prisoner to the gaole, ought to shew in their *Mittimus* the cause of the commitment, to the end it may appeare whether such prisoner be baileable or no. *Mittimus de forme.*

Cromp. 153. And if the Justices of peace shall commit one to the gaole, with these words in the *Mittimus*, *sc.* without baile or mainprise (shewing a certaine cause in their *Mittimus*,) yet if such a prisoner be baileable by law, other Justices of peace may baile him; (yet *quare*, seeing their authority is equal) but if the prisoner were committed without baile or mainprise, and without shewing cause in the *Mittimus*, then other Justices of peace cannot (or at least shall not doe well to) baile him, without making the other Justice which committed him, privie thereto; for he might be committed for such cause, as that he is not baileable (as for treason, &c.)

480 pag. 609.

I have seen a Report of a case, *Term. Trin. 37. El.* That upon an assembly of all the Judges and Barons at Sergeants Inne, it was resolved and agreed by them to be put in ure in their Circuits, that if a Justice of peace should commit a man to the Gaole for felony, for which by the Law he is not baileable, but by his *Mittimus* he commits him generally, not shewing any cause, if other Justices of the Peace shall baile him, not knowing of the matter, &c. they shall be fined for the same; for they at their perils ought to informe themselves of the truth of the matter, before they baile him.

14. H. 7. 10. a. Note, where a man is baileable, yet when he commeth before the Justice, he must offer surety to the Justices, otherwise they may commit him to prison. *Br. Peace 7.*

Next it followeth that I shew what persons be baileable, and what not.

P. Mainp. 1. Stanf. 71. It appeareth by the statute of *Westm. 1. cap. 15.* that in these foure cases following, a man was not baileable at the common law. *Br. Mainp. 47. Persons not baileable. F. N. B. 66. c.*

1 No person taken for the death of a man, *sc.* for murder, or any other homicide, was baileable by the common law.

Br. Mainp. 11. 47. 57. 60. 63. 78. 47. And yet the Justices of the Kings Bench doe use to baile them, yea, although it be for murder. *Br. Mainp. 60. 63. 78. 47.* See the stat. *3. H. 7. c. 1.*

F. Cor. 351. P. Jul. 107. Lamb. 335. Also the stat. *1. & 2. P. & M. cap. 13.* seemeth to admit that for manslaughter, and all other homicides (except murder only) the slayer may be bailed by the Justices of peace; which also I take to be the common practice at this day. But let the Justices of peace be sparing and well advised herein, *viz.* that the offence be but manslaughter, and not murder.

Also it seemeth the Justices of peace cannot baile him that hath committed manslaughter, if either he hath confessed the offence upon his examination (*vide postea in. Bailment :*)

P. Mainp. 1. Or that he be taken with the manner :

Or that it be apparently knowne that he killed the other. *Vide pag. sequens.*

He that hath dangerously hurt another; may goe under baile, &c. See before. *13. H. 7. cap. 1.*

2 Secondly, no person taken by the Kings commandement, was baileable by the common law; but this must be intended of the Kings commandement by his owne mouth, or by his privie Counsell, which are incorporate to him. See *Stamf. 72. c. Br. Mainp. 37. 47.*

3 Thirdly, no person taken by the commandement of the Kings Justices, was baileable by the common law: But this must be intended of their absolute commandement; as if the Justice commands one to prison, without shewing cause why he doth so command, or for misdemeanor done in his presence, or for some other cause which lyeth in the discretion of the Justice (more than in his ordinary power, &c.) and that such imprisonment be for a punishment. Stamf. 73. See p. p. ccd.

And therefore if the Lord Chancellor of England, or Lord Keeper of the great Seale (who have power to commit one to prison, wheresoever they are in England) shall command or commit one to prison, (by such their absolute authoritie) such person shall not be bailed.

And so if the Justices of the Kings Bench shall command one to prison.

And so if the Justices of the Court of Common Pleas sitting in their Court,

Or Justices of Assise in their places; if these shall commit any to prison, they are not baileable.

But where any Justice or Justices shall commit one, rather to be safely kept, than for a punishment; such commitment may be said to be by an ordinary commandement, and the party so committed is baileable. *Termes de ley.*

4 Fourthly, trespassers in the forreft, were not baileable by the common law: but that was remedied by the stat. 1. E. 3. c. 8. & 7. R. 2. cap. 4. *F. N. B. 67. c.*

By Statute. But now for that by the statute 1. & 2. P. & M. c. 13. it is provided, that no Justice, or Justices of peace, shall let to baile any person contrary to the aforefaid statute of *West. 1.* (made 3. E. 1.) cap. 15. And so the said statute of *West. 1.* is now as a line, whereby the Justices of peace are to guide themselves in cases of Bailment; I will shew here what persons are baileable by that statute of *West. 1.* and what not. P. Just. 107.

By this statute of *West. 1.* no prisoner shall be let to baile, which is taken in any of these xiii. cases following: 3. Ed. 1. 11. P. Mainp. 1. F. N. B. 64. d.

1 Such as have abjured the Realme shall not be bailed.

2 Nor any approver or appellor, for that he confesseth the felony, and himselfe guilty, before he can burden or accuse another, as coadjutor, or helper with him in doing the same. Stamf. 144. b. Lamb 137.

3 Nor he which is appealed by an approver, so long as the approver doth live, except he be of good name, or that the approver doth waive his appeal: see *Stamf. 74.* Or that the approver be vanquished, 25. E. 3. 42. Fitz. 370. d. Br. Mainp. 9.

4 Nor he which is taken for burning of a house, &c. feloniously. *Vide antea, Felony by the Common law, cap. 105.*

5 Nor any excommunicate person, taken (at the Bishops request, &c. upon his certificate into the Chancery) by the writ of *Excom. capiend.* *F. N. B. 66. c.*

And

And yet when the party is so taken, if he will conforme himselfe to the Lawes of Holy-Church, and give surety for his obedience, he shall have a writ *de cautione admittenda*, directed to the Bishop; and if the Bishop will not, then hee shall have a writ to the Sheriffe to deliver him. See *Fitz. 63. c. d.*

6 Nor any felon taken with the manner.

7 Nor a theefe openly defamed and knowne.

8 Nor he which is outlawed in case of felonie; and yet in some cases, such as be outlawed may be bailed by the court, &c. See *Stat. 74.*

9 Nor he which hath broken the Kings prison. *Vide antea tit. Felonie by Statute, cap. 106.*

10 Nor he which is taken for treason, touching the King himselfe.

11 Nor he which is taken for falsifying the Kings money.

12 Nor he which counterfeiteth the Kings seale. *Br. Mainp. 59.*

In all these former cases, if the cause for which the party is imprisoned be treason or felony, or otherwise toucheth life, or member, then shall he not be baileable; otherwise it seemeth he may be bailed.

13 Nor he which is taken for a manifest offence, as if a man be indited and imprisoned for a Ryot, or other great offence, before Justices, by force of the Kings commission of Oyer and Terminer, this (and the like) are the manifest offences whereof the statute speaketh. See *Fitz. 250. f.*

West. 1. 15. P. Mainp. 3. But by the same statute of *West. 1.* such persons are baileable, which be taken in any of these six cases following.

First, he that is taken (or indicted) for light suspicion of felony, is baileable: see *Lamb. 335. F. N. B. 249. g. 250. c. 251. f.*

Stat. 74. c. He that is taken upon suspicion of burglary, robbery, or theft, if he be not of evill fame, nor that there be any strong presumption against him, it seemeth he is baileable.

16 E. 4. 5. Br. Mainp. 75. A man had stolne certain hogs, and (for that he was of evill fame) he was committed without baile; yet if he could have brought prooffe or witnesse that he bought them, he should have been bailed.

Gramp. 154. A man is arrested for suspicion of felony, and brought before the Justice, if it shall appeare that there is no such felony committed; the party may be set at liberty without baile; but if there be a felony committed, though the prisoner can cleare himselfe, yet the Justice must either commit him, or baile him. *Vide antea tit. Felony by Statute.*

P. Mainp. 3. Fitz. 150. 5. Secondly, he that is taken (or indited) for petty Larceny (that amounteth not to 12. d. or above the value of 12. d.) if he were not guilty of some larceny before, he is baileable.

P. Mainp. 3. Thirdly, such as be indited of larceny by enquest of office, before the Sheriffe, or before Coroners, or Bailiffes, &c. or in any base Court, they shall be set at liberty upon sufficient surety.

Stat. 7. 4. Fitz. 147. & 150. c. Br. Mainp. 97. And yet they shall not be bailed, if they be not also of good fame; but if they be of good fame they are to be bailed, although they be indicted as aforesaid (before Sheriffes, Bailiffes, Coroners, or before any other such officers, by their office; or in any base Court:) yet *quare* if the Justices of peace out of their Sessions may safely baile such persons; for being indicted, they are more than vehemently suspected, &c. *Vide pa. sequente.*

One

*Persons bail-
able.
1 Persons so-
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*2. Petty Lar-
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Sam. 74. Fitz. 247. & 250. c. R. Mainp. 97. And yet they shall not be bailed, if they be not also of good fame; but if they be of good fame they are to be bailed, although they be indicted as aforesaid (before Sheriffes, Bailiffes, Coroners, or before any other such officers, by their office; or in any bafe Court:) yet *quare* if the Justices of peace out of their Sessions may safely baile such persons; for being indicted, they are more than vehemently suspected, &c. *Vide pa. sequente.*

One

Persons bail-
able.
1. Persons sus-
pected.

2. Pety Lar-
ceny.

3. Persons in-
dicted by en-
quest of office.

One that was indicted before the Coroner, that he had killed another *se defendendo*, was (by the Justices of gaole deliverie) bailed till the next Assises, to purchase his pardon. 26. *El. Crump.* 153. See *antea* tit. *Misadventure*.

One that was indicted before the Sheriffe for stealing of a horse (which seemeth to have beene in his torne) may be bailed by the Sheriffe (if hee be of good fame) by the writ *de Manucapione*. *F. N. B.* 249. g.

Also one that was indited of burglary, as principall, pleaded not guiltie, and was after bailed. 29. *lib. Ass. Fuz. Mainp.* 9. See *infra*.

Another that was indited of robbery, was bailed. 41. *lib. Ass.* 30. *Br. Mainp.* 61.

If any murderer being indited, and after arraigned at the Kings suit, shall be thereof acquitted within the yeare and day, the Justices before whom he is acquitted, shall not suffer him to goe at large, but either shall remitt him againe to prison, or else may baile him (at their discretion) till that the yeare and day be passed, to the end that the wife, or next heire to the party murdered, may have their appeale of the same murder, within the yeare and day after the same murder done, &c. 3. *H. 7. cap. 1. Fuz.* 251. g.

Persons at-
tainted, or con-
victed.

But such as are attainted, or convicted of felony, are not baileable; for although it doth not appeare by any words of the said Statute of *West. 1.* that it doth prohibite the bailment of such as bee attainted by verdict, yet it is to bee intended, that the statute doth as well prohibite the bailment of those attainted by verdict, as it doth of them who bee attainted by Outlawry; and therefore if a prisoner after he hath pleaded, Not guilty, bee attainted by verdict, that he killed a man *se defendendo*, or by misfortune, yet he shall not be bailed by the Justice of peace: *Tamen vide antea* tit. *Felonies by Casualty*, *hic cap.* 96. & *Stamf.* 15. c. *Fuz. N. Br.* 246. c. *que ilz serra baile per les Justices (de gaole deliverie) devant queux il serra toyé, &c.*

Stamf. 15. c. 154.

And if a man that is arraigned of Homicide doth plead, Not guilty, and is found guilty, and doth pray his Clergy, and is reprimed without judgement, he is not baileable; for being convicted of the felony, he is more now than vehemently suspected, and the intendment of Law in cases of bailment, is, that it resteth indifferent whether he be guilty or not, untill triall, &c.

Dyer 176. Sec. 10. Mainp. 99.

The same reason seemeth to hold, if a man be found guilty of homicide, before the Coroner: yet see 22. *Ass. p. 94. Br. Cor.* 90. that such are baileable as are found (before the Coroner) but suspicious.

Also a man convicted of felony, remaineth in prison, and after obtaineth the Kings pardon, the Justice of gaole delivery may baile him till the next gaole delivery, that he may then come with his pardon and plead it, 2. *E. 6. Br. Mainp.* 94.

Accessaries.

4 Those that be charged with the receipt of theeves, or felons, or of commandement, or force, or of aide (in felony done) be baileable.

p. Mainp. 6. Sec. 71.

And it seemeth that abettors, consenters, and procurers, and all other accessaries to felonies, are within the equity of this statute, and are baileable: yea, accessaries (as well in case of the death of a man, although it bee murder, as in case of other felonies) are baileable (if they bee of good

Stamf. 11. c. Fitz. 350. d. Br. Mainp. 11. 19. & 58.

46.E.3.f.28.
Stamf.71.c.
Br.Main.58

good fame) untill the principall be convict or attaint; but after the principall is attained, the accessary shall not be bailed, but kept in prison: and yet if (after the attainder of the principall) the accessarie shall appeare, and plead not guilty, or other plea, it seemeth he shall be bailed; The reason is, for that when the accessary shall make default, then is it as a *fugam fecit*, and a great cause of suspicion of the thing; but when he appeareth, by that the suspicion is now taken away, and so he is baileable. See more in *Br. Mainp. 6.9.22.54.64. & 97.*

Stamf.71.
F. Cor. 200.

If a man be accessary to two, and the one principall is attained, though the other be not, yet the accessary shall not be bailed.

In felony, if the principall die in prison, or be attained of another felony, the accessary shall be bailed. *F. Cor. 378. Br. Mainp. 91.*

But note that in case of treason neither the principall nor accessary shall be bailed.

Stamf. 74.
Br. Main 58.90
F. Mainp. 9.

Also the said statute of *Westm. 1. cap. 15.* doth no more restrain the principalls (to bee bailed) than the accessaries, in those cases where the same statute doth not prohibite to let to Mainprise; and therefore if a man be indicted of Burglary as principall, yet he may be bailed. *Stamf. 24. Br. 56. 29. Ass. pl. 44.*

Principal.

Stamf. 74.

Also the principall in an appeale of robbery may bee bailed; and so may hee bee bailed upon an indictment of robbery. *Br. 61. 75. & 97.* And yet in an appeale of robbery, the Booke 6. *H. 7. f. 1. b.* seemes to the contrary.

Stamf. 71.
Br. 56. 58. 97.

But the principall in the death of a man, is not baileable, either by the Common Law, or by the Statute of *Westm. 1.* yet see hereof before in this title, that the Justices of the Kings Bench doe use to baile them. Also see there for what homicides the Justices of peace may baile one that is a principall.

West. 1. 15.
P. Mainp. 2.

5 Fift, those that be charged with (or guilty of) any Trespasse, that toucheth not losse of life, nor member, be baileable by the Statute of *West. 1. 15.* But yet let the Justice of peace have a care that baile be not prohibited by any other latter Statute in such cases of Trespasse.

Trespasse.

Fitz. 250. g.
Lamb. 337.
Br. 97.

If any person be committed to prison, by proceffe from the Sessions made upon an indictment upon any penall statute (not prohibiting baile) he may be bailed (out of Sessions) by two Justices of peace, the one being of the *Quorum.*

Or hee may have a Writ out of the Chancery directed to the Just. of peace, or to the Sheriffe) to take surety of him for his appearance before the Justices at their Sessions, &c. Or he may have a *Certiorari* to remove the Record into the Kings Bench, and a *Habeas Corpus* to remove the body thither also. *Fitz. 250. g. b. i. & 251. c.*

C. 6. 157. 334

If proceffe from the Sessions shall goe forth upon any indictment of trespasse, &c. it seemeth that any one Justice of peace may take baile of the partie, to appeare at the day, &c. to answer to the indictment: and the same Justice may thereupon make his *Superfedeas de cap. indit. &c.* (and so of the Exigent) for otherwise, besides the mischief of imprisonment, the party may be outlawed before the Sessions: see some presidents therein, *postea ut. Presidents.*

Note

Note, that the Justices of Peace are not to baile any prisoner, except the prisoner be committed for such cause, whereof the said Justices of peace be competent Judges, *sc.* such causes as they may heare and determine.

And therefore if a man be taken upon proceffe of rebellion, issuing out of the Chancery, or Star-Chamber, the Justices of peace are not to baile him. And M. *Crompt.* reporteth of two Justices of peace, who were fined for bailing one in such a case. *Lamb. 137.
Crompt. 133.*

If a man be arrested by force of any proceffe, writ, bill, or warrant, in any action personall, the Justices of peace are not to baile him.

Persons condemned in any of the Kings Courts, and by vertue thereof committed to prison: and persons being in execution upon any statute or recognisance, &c. at the suit of any person, the Justices of peace are not to baile any such.

6 Sixtly, he that is appealed by an *Approver*, (being no common theefe, nor defamed, after the death of the *Approver*) is baileable by the said statute of *west. 1.* *P. Mainp. 21
Fitz. 370. d.*

Note, that a man cannot become an *Approver*, (or an accuser of others) before Justices of Peace (for that the Justices of Peace have no authority to assigne him a Coroner,) neverthelesse it seemeth both reasonable and serviceable, that if a felon will become an *Approver*, that is, will confesse his felony, and also accuse others (that were coadjutors with him in doing the same felony, or in other felonies) before a Justice of peace, that such Justice may take his confession, and commit him to the gaole, and may also grant out his warrants for the apprehending of the others that are so accused. *Stamf. 144.
Br. Peacc. 6.
Abr. D. off.
72. 76.*

Concerning an Approver, observe these Rules :

- 1 One cannot be an Approver, but in felony or treason. *9. H. 6.*
- 2 One cannot be an Approver, but upon an inditement only. *1. H. 7. 5.*
- 3 An Approver must accuse the other of such an offence as he himselfe did together with the other. *Stamf. 143.*

Againe, the stat. of 23. *H. 6. c. 10.* taketh away baile from all such as be in prison, by condemnation, execution, *Capias inlagatum*, excommunication, surety for the peace, or by the speciall commandement of any Justice, prohibiting that such be not bailed, either by the Sheriffe or other officer or minister. *Stamf.
Finch.*

There be divers other statutes which do take away baile from the offenders thereof, and that not only upon their solemn conviction after publike hearing, triall, and judgement, but also upon the record of one or two Justices of peace, or by private examination and confession of the offender, or prooffe of witnesses, or such other private triall had before the Justices of peace out of their Sessions, most of which I have here set downe, leaving the rest to the Readers better search.

where bailement is taken away by Statute. CAP. II 5.

where baile
is taken a-
way.

NO person being imprisoned or taken for any of the offences or causes hereunder mentioned, shall be bailed or let to mainprise otherwise than as hereafter followeth, *sc.*

Such as have abjured the Realme shall not be bailed, *west. 1. c. 15.*

21. E. 1. c. 23.

Accom-

Accomptants found in arrerages before Auditors, shall bee imprisoned (without baile) untill they have satisfied their master all arrerages. *where baile is taken 1797.*

Alehouse-keeper without licence, shall be committed to prison for 3. dayes without baile: and before his delivery shall enter recognisance with two sureties, that he shall not keepe any common Alehouse, &c. *Vide antea tit. Alehouses. P. 4.*

Alehouse-keeper prohibited by two Justices of peace, and notwithstanding continueth his selling, &c. he shall be committed for three dayes, as aforesaid. *ibid.*

Alehouse-keepers without licence, for their second offence shall be committed to the house of correction for one moneth: And for every such their offence after, shall be committed to the house of correction, there to remaine untill they bee delivered by order from the generall Sessions, *ibid.*

See also tit. Alehouse. Alehouse-keepers, Inn-keepers, and victuallers, which shall suffer townsmen to continue drinking in their houses, contrary to the Statute of 1. Jac. cap. 9.

Or which shall sell lesse than one full Ale quart of their best Beere or Ale for 1. d. and of the small two quarts for one peny:

Such offenders not having sufficient whereby to bee distrained for the forfeiture, shall be committed to prison untill they have payed the penalty.

Aliens conveying Bowes, or Arrowes, into any parts beyond the seas without licence, shall be committed untill they have made fine (by the discretion of the Justices of peace in their sessions) and given suretie for the payment thereof. 33. H. cap. 9. P. Arch. 6.

Appellers, or Approvers shall not be bailed. *West. 1. cap. 15.*

Nor he which is appelled by an Approver. *ibid.*

Armour. Persons going or riding armed contrary to the statute of Northampton, and being thereof convict, shall be imprisoned untill they have payed such fine as shall be therefore imposed upon them. *See postea sub hoc tit.*

1. H. 2. c. 1. P. Dutton. 3. Arrest. If any person shall procure one to bee arrested in another mans name, he not knowing thereof, or without his consent, such offender being convicted thereof shall suffer fixe moneths imprisonment without baile; and before his delivery shall pay to the party so arrested, treble costs, dammages, and expences; and also shall pay unto the person in whose name he procureth such arrest; tenne pound for every such offence.

If any of a pety Jury in London shall be attainted, by the verdict of a grand Jurie, and therefore committed to prison; Or if any of a pety Jurie in London, shall receive any money, or reward, or promise thereof, of the defendants in the attaint, for the intent to give such his or their verdict:

As also the defendants giving or promising such reward, &c. every such offender being thereof committed to prison, shall there remaine without baile, &c. 12. H. 7. cap. 21.

*Witchhale
is taken
way.*

Bastard. The mother, or reputed father of a bastard child, that shall not performe the Justices order, after notice thereof, shall be imprisoned untill they shall put in sureties according to the statute. See before, *tit. Bastardy*, p. *Bast.* 1.

The mother of a bastard child, committed to the house of correction, for her first offence shall there remaine for one whole yeare, and for her second offence for one whole yeare, and further untill she can put in good sureties for her good behaviour, not to offend so againe. See *ib.*

Breakers of prison are not baileable. *West. 1. c. 15.*

Bridges. Surveyors and Collectors, appointed for the repairing of bridges, if they refuse to account of the money by them received, they shall be imprisoned untill they have truly accounted. 22. *H. 8. cap. 5. P. Bridges 4.*

Burners of houses feloniously are not baileable. *West. 1. c. 15.*

Persons conspiring to indite another of felony, are not mainpernable or baileable. 27. *Aff. Pl. 12. Fitz. Mainp. 7.*

Constables and Churchwardens, neglecting to levie the forfeitures, for abuses in Alehouses, &c. not having sufficient whereby to bee distrained for their forfeiture of forty shillings, they shall be committed to prison untill they have payd the same forfeiture. See *antea, tit. Alehouses*, 1 *Jac. cap. 9.*

Constables neglecting to execute the Justices warrant concerning Alehouses unlicensed, the Constable shall be committed to the county gaole, there to remaine without baile, untill he hath punished the Alehouse-keeper, or untill the said Constable shall pay 40. s. to the use of the poore. 3. *Caroli Regis.*

Constables neglecting to whip trespassers in corne, woods, or orchards, &c. (at the Justices commandement) shall be imprisoned untill they have caused the offender to be whipped. See *tit. Trespasse*. *Sec. 12. d. cap. 10.*

Persons condemned in any of the Kings Courts, and by vertue thereof committed to prison, they shall not be bailed untill they have agreed with the plaintife. 1. *R. 2. c. 12. 2. H. 5. c. 2. Fitz. N. B. 121. a.*

Conjurers, *vide* Witches.

Counterfeiters of the K. seale, or mony, are not baileable. *West. 1. c. 15.*

Cloth. Refusers to be overseers of cloth shall be imprisoned untill they have paid the forf. See *antea, tit. Cloth, cap. 11.*

Such persons as shall be convicted for making of deceiveable cloth, if two Justices of peace shall make certificate thereof, and make their warrant to the Churchwardens, &c. for the levying of the forfeitures; and that the said offenders shal not have whereby they may be distrained for the same forf. the said two Just. of peace may commit the offenders to the common gaole, there to remaine without baile, untill payment shall be made of the summes so forfeited, &c. *his antea Cloth.*

Deere. Persons committed to prison for committing any offence prohibited by the stat. 5. *El. cap. 21.* concerning unlawfull hunting or killing of deere, shall remain there three moneths, and further, untill they shall find sufficient sureties for their good behaviour for seven yeares, &c. See *his postea Hunting.*

Dyers

Dyers, using Logwood, and being thereof convicted, they shall remain in prison without baile, untill they have satisfied the forf. 23. *El. cap. 9. P.* ^{where baile is taken away.}

Dying 1. & 39. El. cap. 11.

Allo such offence (of using Logwood) being found by the examination of any Justice of peace, if the offender shall refuse to be bound (by the said Justice) to appeare at the next gaole delivery, or quarter Sessions, &c. then the said Justice of peace may commit such offender to the gaole, there to remaine untill such offender shalbe bound accordingly. See *antea* *tit. Dying. 39. El. cap. 11.*

West. 1. 15.
5. El. 23.
See 13. H. 6.
6. 10.

Excommunicate persons, taken by a Writ *de Excommunicato capiendo*, or yeelding their bodies to the Sheriffe or other officer, upon any Writ of *Capias* awarded, and Proclamation thereupon made, according to the stat. of 5. *El. cap. 23.* provided for the due execution of the said Writ *de Excom. capiendo*, such persons shall not be bailed.

Execution. Such persons as are in execution, upon any statute or recognisance, or upon judgement given in the kings Court, at the suit of any person, they shall not be bailed untill they have agreed with the plaintife, 1. R. 2. c. 12. 23. H. 6. c. 10. *Fitz. Na. Br. fol. 93. c. & 121. a.* And yet then the Justices of peace are not to baile them.

Feesants; see *Partridges*.

Felons, taken for the death of a man, are not baileable; and yet if it be not murder, and their offence not apparent, it seemeth they may be bailed. See *hic antea cap. 114.*

2 Felons taken with the manner are not baileable. *West. 1. cap. 15.*

3 Nor if it be apparently knowne that they did the felony. *ibid.*

4 Nor if they confesse the felony upon their examination before the Justice of peace. *Crom. 152. b.*

5 Nor if he be a theefe openly knowne. *West. 1. 15.*

6 Nor if he be of evill fame by credible report. *Br. Mainp. 75.*

Yet in these former cases of felony, if the theft be not twelve pence, or above the value of twelve pence, the Justices of peace may baile the prisoner, it being no felony of death.

7 Nor he which is convict, or attaint of felony, is not baileable. See before *sub hoc tit.*

Accessaries in felony shall not be bailed, after that the Principall (or any one Principall) is attainted. But before the Principall is attainted, the Accessary is baileable by the Common law. *Stamf. 71.*

5. El. c. 21.
P. Fish 7.

Fish. Destroyers of ponds, pooles, or moates, wherein any fish are, or unlawfully to fish in any severall pond, poole, or moate, to the intent to take, kill, or destroy any fish there; every such offender being thereof lawfully convicted, shall have three moneths imprisonment, and then shall find sufficient sureties for their good behaviour for seven yeares after, or else shall remaine in prison without baile, untill they shall have found sureties accordingly.

11. H. 7. c. 13
P. Fish 11.

2 Gageors, Packers, or Searchers of fish, that shall take any extortion for doing their office, shall have forty dayes imprisonment without baile.

5. El. c. 7.
P. Fish d. 1.

3 Eaters of flesh upon any fish day, shall forfeit and pay for every time

where baile
is taken a-
way.

twenty shillings, or else suffer one moneths imprisonment without baile (after any lawfull conviction in that behalfe.) 5 *El. cap. 5.*

Forcible Entrie, or Detainer; persons convict thereof shall not bee bailed, untill they have payed their fine, or have found sureties by recognizance for payment thereof. See *antea tit. Forcible Entrie.*

Forestallers, Regrators, and Engrossers, being thereof convicted, shall be imprisoned for two moneths without baile. 5. *Ed. 6. ca. 14. P. 4.*

Forgers of any Deed, writing sealed, will, or court roll:

2 And the assenters thereto:

3 And the publishers thereof, knowing the same, &c.

Every of the offenders aforesaid (in cases of forgery) being thereof convicted, shall suffer perpetuall imprisonment during their lives, where any mans estate of inheritance, freehold or copyhold, shall be defeated, charged, or molested thereby: otherwise the offenders shall suffer one yeeres imprisonment without baile. 5. *El. ca. 14.*
P. 1. 2.

Fowle. Destroyers of any Feasant, Partridge, Pigeon, or house-dove, (or of any Hearn, Mallard, Ducke, Teale, or such other fowle;) Or to shoote at any such fowle, and the offence proved before any two Justices of peace; every such offender shall be committed for three moneths without baile, unlesse the offender shall forthwith pay to the use of the poore there, xx s. for every such fowle so destroyed, &c. See *antea tit. Partridges.*

Fraudulent Conveiances. gifts, bonds, or suits, &c.

1 The parties thereto:

2 The defenders, or justifiers thereof, or putters thereof in ure, know- 17. *El. ca. 5.*
P. 1. 2.
ing the same:

3 And those which shall assigne over any lands, leases, or goods so to them conveyed, knowing the same;

Every person being of any of these last offences lawfully convicted, shall suffer imprisonment one halfe yeere without baile. See more *Stat. 14. El. 11. & 27. El. cap. 4.*

Games unlawfull.

1 The maintainers of houses, or places, for any unlawfull game:

2 Players in common houses or places at any such game: 31. *H. 8.*

3 Players (elsewhere) at any unlawfull game:

Every Justice of peace, seeing or finding any such offence, may imprison the offenders till they find sureties by Recognizance, no more to offend in the premisses, &c. See *antea tit. Games unlawfull.*

Gaoles. Collectors, or Survaiors for Gaoles (in certaine Shires) refusing to make account, shall be committed to prison, there to remaine untill they have made a true account. 23. *H. 8. cap. 25. El. c. 24. & 13. El. c. 25.* But these statutes are herein now expired.

Gunnies. Such persons as shall shoote in, keepe, carry, or use any Gunne, dag, crosse-bow, or stone-bow, contrary to the stat. of 33. *H. 8. cap. 6.* (upon prooffe thereof made before any Justice of peace) shall be imprisoned untill they have payed ten pound for every such offence. See *antea tit. Gunnies.*

No person under the degree of a lord, shall shoote in any hand-gun, within

within any citie or towne, at any fowle, or other marke upon any Church, house, or Dove-coate: Neither shall any person shoot in any place, any haile-shot, or any moe pellets than one, at one time, upon paine to forfeit ten pounds, and to have three moneths imprisonment. 2. & 3. *Ed. 6. cap. 14.*

Hares. Every person which shall shoot at, kill, or destroy, with any Gun, or Bow, any Hare:

2 Or shall trace, or course any Hare in the snow:

3 Or shall take or destroy any hare with cords, or any other engine: *where baile is taken away.*

Any of these last offences being proved before any two Justices of peace, the offender shall be committed for three moneths without baile, unlesse the offender shall forthwith pay to the use of the poore there, xx.s. for every Hare so destroyed or taken. See *ant. tit. Partridges.*

Hatters. Which shall take above two apprentices:

2 Or which shall take an apprentice for lesse time than 7. yeeres: The offenders in either of the former cases, shall suffer one moneths imprisonment without baile. 8. *El. c. 11. P. Hats. 3.*

Hawkes. Takers (unlawfully) of any Hawkes, or of their egges, out of another mans ground, and being thereof lawfully convicted, shall have three moneths imprisonment, and then shall finde sureties for their good behaviour for seven yeeres after; or else shall remaine in prison without baile, untill they finde sureties accordingly.

Hawkers. Betweene the 1 day of July, and the 31 of August, the offence being proved before any two Justices of peace, the offenders shall bee committed to the common Gaole for one moneth without baile, unlesse they pay forthwith 40 s. for every such Hawking, and xx s. for every Feasant, or Partridge, that they shall so kill, or take. 7. *Ja. 11. See antea, tit. Partridges.*

Highwayes. Baylives, and High-Constables, which shall not pay the forfeitures by them collected, shall be imprisoned untill they have payed the same. See before *tit. Highwayes. 2. Ph. & M. cap. 8. P. 11.*

Hony. See *Waxe.*

Hostelers, or Inne-holders, which shall make any horse-bread (contrary to the statute 21. *Jac. cap. 21.*) Or which shall not sell their horse-bread, hay, oats, beanes, pease, provander, or other kind of victuall (for man or beast) for reasonable gaine; and being thereof lawfully convicted, &c. the second time, shall bee imprisoned by the space of one moneth without baile. 21. *Ja. Regis, cap. 21.*

So of such Hostelers, and Inne-holders as are allowed by the said statute to make horse-bread within their houses, if the horse-bread which any of them shall make be not sufficient, lawfull, and due of assise, &c. and that they be thereof lawfully convicted the second time, they shall be imprisoned one moneth without baile. *Ibid.*

Hunting. If any lay man, not having in lands 40 s. *per ann.* Or if any Priest or Clerk, not having x. l. living *per an.* shall have or keep any hound, Greyhound, or other dog for to hunt, or any ferrets, hays, Harepipes, cordes, nets, or other engines, to take or destroy Deere, Hare, Conies, or other Gentlemens game, and shall be thereof convicted at the sess. of

the peace, every such offender shall be imprisoned for one whole yeere.
13.R.2.ca.13.P.1.

If any person shall keepe any Greyhound for Deere, or Hare, not having sufficient living, and shall be thereof convicted before any two Justices of peace, he shall be committed for three moneths without baile, unlesse he forthwith pay fortie shillings for having such Greyhound. See before *tit. Partridges. 1. Jac. ca. 27.*

Hunters, and takers of the Kings Deere, See the statute of *Charta de Forest. cap. 10.*

where baile
is taken a-
way.

Hunters, or killers of any Deere or Conies (in the night or day time) in any Parke or Warren, or in any other inclosed grounds, and being thereof lawfully convicted, every such offender shall suffer three moneths imprisonment, and find sufficient sureties for his good behaviour for the space of seven yeeres after, or else continue still in prison without baile, untill they shall find sureties accordingly. 5.El.ca.21.3. *Ja. ca. 13. P. Forests 9. & 7. Ja. 13.*

The stat. of *Westm. 1. ca. 20.* provideth that trespassers in parkes, and ponds, being hereof attainted, shall yeeld to the party wronged great damages, and shall have three yeeres imprisonment, making fine at the kings pleasure, and at the end of three yeeres finde good sureties not to commit the like trespassse afterwards, or for want of such sureties shall abjure the Realme, or be outlawed. See *Fit. 67. d. & Dyer 238. 5. H. 5. fol. 1. Fit. Judgement 62.*

But note, that this stat. *de malefactoribus in parcis*, extendeth onely to hunting, or killing of beasts there, and not to other trespassses, 34.E. 3. fol. 11. *Fit. Judgement, 144.* And if a man hunts there, or shall come into a parke but for that purpose, yet hee shall bee punished according to this stat. *Fit. Judgement 62.*

The stat. 19.H. 7. 11. ordaineth, that if any person having no Parke, &c. of his owne, shall keepe any Deere hayes, or Buckstalls; or if any person shall stalke at any Deere, without licence, the offenders being thereof convicted, shall be committed to prison, till they have found surety for the payment of the forfeiture of the statute.

King. Speakers of false newes, which may cause discord betweene the King and his people, &c.

2 And speakers of false newes, or lyes, of any the Peeres, or great Officers of the Realme.

The offenders in either of the former cases shall be imprisoned untill they have brought him into the court, who was first author of the tale, 3.E. 1. ca. 33. 2.R. 2. c. 5. *P. Newes 1.* See *Dyer 155. & 285.* and the statutes of 1. & 2. *Ph. & Mar. ca. 3. 1. El. c. 6. & 23. El. c. 2.*

3 No person committed by the speciall commandement of the King, or by the commandement of any of his privie Councell, shall be bailed. See *antea sub hoc tit.*

4 No person committed by the speciall commandement of any of the Kings Justices, shall be bailed, *P. Mainp. 1. & 23. H. 6. c. 10.* See *Ib.*

5 So in all cases, where a stat. ordaineth, that an offender shall be imprisoned at the Kings will or pleasure, there the prisoner cannot bee bailed. Stam. 77. b.
Br. Main
40.

bailed or delivered, untill the King hath signified his pleasure of him: (as if one be imprisoned for going or riding armed contrary to the stat. of Northampton, made An. 2. E. 3. c. 3.) 24. E. 3. f. 3. Br. Contemps. 6.

Lamb. 556. And in such cases, the prisoner is to redeeme his liberty with some portion of money, as he can best agree with the King or his Just. for the same: and the Justices before whom such an offender shall bee convicted, may asseffe such fine or ranfome, according to their discretions, and upon payment thereof may baile the prisoner; for the King therein signifieth his pleasure by the mouths of his Justices. See the first title of *Forcible Entry*.

Inne-keepers, or Inholders, see *hic c. 115. tit. Alehouse-keeper, & Hosteler.* where baile is taken away.

5 Eliz. 4. Labourers, and Artificers departing from their worke before it be finished, shall have one moneths imprisonment without baile. 5. E. 1. c. 4. P. Labor. 10.

2 Servants departing before their terme be ended (unlessse it be for some cause to be allowed by some Justice of peace.)

3 Servants departing at the end of their terme, without any quarters warning given before two lawfull witnesses.

4 Persons (compellable to serve) that upon request made, shall refuse to serve for the wages rated and appointed by Proclamation, &c.

5 Persons (compellable to serve) that have promised or covenanted to serve, and doe not serve accordingly.

5 Eliz. 4. P. Lab. 6. Every of these foure last recited offenders (upon prooffe of the offence before any two Justices of Peace, &c.) shall be committed to ward, there to remaine without baile, untill he shall be bound (to the partie offended) to serve and continue with him according to the statute.

P. Lab. 24. 6 Persons refusing to bee bound apprentices (according to the statute) upon complaint thereof made to any Justice of peace, hee may commit such offenders to ward, who shall there remaine untill they will be bound to serve according to the statute, 5. Eliz. 4.

P. Lab. 14. 7 Women (of the age of 12 yeeres, and under 40. and unmarried) that shall refuse to serve, they shall be committed to ward, there to remaine untill they shall be bound to serve according to the statute, 5. Eliz. 4.

8 Masters giving wages, and servants (workemen, or labourers) taking wages (or other commodity) contrary to the rates asseffed by Proclamation, &c. every such M. shall have ten daies imprisonment without baile; and every such servant, workeman, or labourer, shall have 21 daies imprisonment without baile, 5. Eliz. 4. P. Lab. 4. *hic cap. 31.*

8 H. 6. 4. P. Liver. 1. Liveries. Such persons as at their proper costs shall buy, or weare any liveries, cloths, or hats to have maintenance, and be thereof convicted, shall have one whole yeeres imprisonment without baile: but this stat. is now repealed by the stat. 3. Car. 4.

In an appeale of *Nayhem*, where upon evidence the act shall appeare to be heynous, the offender or defendant shall not be bailed. 6. H. 7. f. 1. fi. 70.

39 Eliz. 16. Maulting. If any person shall disobey the restraint of maulting, or any other order made in Sessions touching the same, and be thereof convicted (before any two Justices of peace) hee shall be committed to the Goale for three dayes, (without baile) and after there to remaine untill he shall become

where baile
is taken a-
way.

become bound in 40 l. to performe and obey such order or restraint.
See *anteatit. Mault.*

If any person shall buy any Barley to mault, after such a restraint, hee shall be imprisoped as aforesaid. *ibid.*

Money. Persons taken for falsifying the Kings money, shall not bee bailed. *Westm. 1. cap. 15.*

Musters. Persons absenting themselves from Musters, being commanded to muster before any having authority for the same, and having no lawfull impediment:

2 And persons (being commanded to muster as aforesaid) that shall not bring with them their best furniture and armour, which they have for their owne person:

The offenders in either of the former cases, shall for every such offence suffer ten dayes imprisonment without baile, unlessse they agree with two of the said Commissioners to pay to the Kings use, 40 s. a time for every such offence. *P. Capitaines 12.* 4 & 5 Ph. & M. 4.

To Muster is to make a shew of Souldiers well armed and trained before the Kings Commissioners, in some open field, *ubi se ostendentes praeludunt prelio. Col. 1. 71.*

And it is worthy of observation, that by the law before the Conquest, the Musters and shewing of armor, should bee *uno eodemque die per universum regnum, ne aliqui possint arma familiaribus et notis accommodare, &c. ibid.*

Newes. See before *King.*

Oath. Refusers to take the oath of Allegiance, (being lawfully tendered to them) shall be committed to the common Gaole, there to remaine without baile, untill the next Assises, or quarter Sessions. See before *tit. Oath, and Recusants.* 3 Ja. 1. 7 Ja. 1.

Parliament, and Knights of the Parliament, See *hic postea, Sheriffes.*

Parke. Hunting therein, see *hic Hunting, and Hunters.*

Partridges. If any person shall shoot at, kill, or destroy (with any gun, or bow) any Partridge, Feasant, or other fowle, &c.

2 Or shall take, kill, or destroy any Partridge, Feasant, or Pigeon, with setting dogges and nets, or with any manner of nets, engines, or instruments.

3 Or shall take out of their nests, or willingly destroy in the nest, the egges of any Partridges, Feasant, or Swanne.

4 Or shall have or keepe any setting dog, or net, to take Partridges, or Feasants, (except they have sufficiency of estate, &c.)

Every of these foure last recited offenders (upon prooffe of the offence before any two Justices of peace) shall bee committed to the common Gaole, there to remaine for three moneths without baile, unlessse the offender shall forthwith pay xx s. for every such fowle and egge so taken or destroyed; and 40 s. for having such setting dogge, or net. See *tit. Partridges.* 1 Ja. 27.

5 Hawkers at Partridge, or Feasant, in July or August, (upon prooffe of the offence before any two Justices of peace) every such offender shall bee committed to the common Gaole, there to remaine for one moneth 7 Ja. 28.

moneth without baile, unlesse the offender shall forthwith pay 40.s. for every such hawking, and 20.s. for every Feasant or Partridge so killed or taken. See *ibid.* *where baile is taken away*

23. Eliz. 10. 6 Persons convicted according to the statute of 23. *Eliz.* 10. for destroying or taking of Feasants or Partridges in the night time, shall have one moneths imprisonment without baile, unlesse they pay the penalty of that stat. within ten dayes; and further to become bound with good sureties, for the space of two yeeres, not to offend so againe.

11. H. 7. 17. 7 Persons convicted according to the stat. of 11. *H.* 7. 17. for taking the egges of any hawke, or swan, out of their nests, shall be imprisoned for a yeere and a day, and fine at the Kings will. See *Hawkes.*

5. Eliz. 9. *Perjury.* Persons committing perjury, by his or their deposition, in any court of record, or court Baron, being thereof lawfully convicted, shall have fixe moneths imprisonment without baile. *P. Per.* 1. 2. & 14. *Eliz.* cap. 11.

2 So of Procurers of such perjury; they being thereof lawfully convicted, and having not to pay the penalty of the statute, they shall have one yeeres imprisonment without baile.

Physicians. He which is committed to prison by the President of the Colledge of the facultie of Physicke in London, &c. shall there remaine without baile, untill he shall be discharged by the same President, or by such as they shall authorize, *1. M. cap. 9.*

1 Ja. 3. 1. *Plague.* Refusers to pay their rates, for the reliefe of persons infected with the plague, and not having whereon to be distreined for such their rates, they shall bee committed to the Gaole, there to remaine without baile untill they shall satisfie the same, and the arerages. See *tit. Plague.*

4. Eliz. 2. *Poore.* Refusers to pay their rates towards the reliefe of their poore, setting them on worke, or putting out of poore children to bee apprentices, and not having whereon to be distreined for such their rates, they shall be committed to the Gaole, there to remaine without baile, untill they shall pay the same, and the arerages. *Aliter dilectum case legendo*

P. 2. 2 Overseers (of the poore) refusing to make their account, or refusing to pay (to the new Overseers) such arerages, summes of money, or stocke, as shall remaine in their hands upon their account made; they shall be committed to the Gaole, untill they have performed the same. See *antea, tit. Poore.*

P. 2. 3 Overseers, negligent (otherwise) in their office, shall forfeit for every default xx.s. And not having whereon to be distreined for such forfeiture, they shall be committed to the Gaole, there to remaine without baile, untill the said forfeiture shall be paid. See *ibidem.*

P. 3. 12. 4 The grandfather or grandchilde, or other parents or children, refusing to relieve one the other, in such manner as shall be assessed by the Justice of peace at their Sessions, shall forfeit for such default xx.s. for every moneth, and not having whereon to be distreined for such forfeiture, they shall be imprisoned as aforesaid, untill the said forfeiture shall be paid. See *ib.*

P. 3. 5 Refusers to pay their rates towards the reliefe of the Prisoners in the

Wherebaile
is taken a-
way.

the Kings Bench, Marshalsey, and not having whereon to be distrained for such rates, they shall be imprisoned without baile, untill they shall pay the same. See *antea*, *tit. Stock of the Shire*.

Prayers. Such as offend against the statute 1. *El. c. 2*. concerning Uniformity of Common prayer and service in the Church, and be thereof lawfully convicted (by verdict of 12. men, or by their owne confession, or by the notorious evidence of the fact) they shall be committed without baile; see the stat. 1. *El. c. 2*. for in some cases the offender shall suffer six moneths imprisonment, in other cases one whole yeares imprisonment, and in other cases imprisonment during life.

P. Sacram.

Preachers. Disturbers of Preachers in the time of their Sermon, and their aiders and procurers. 1. *Mar. 3*.

2 Such as shall disturbe the arresting of any such offender:

3 Such as shall rescue any such offender, being apprehended:

Every such offender (being thereof convicted before any two Just. of peace) shall be committed to the gaole, there to remaine without baile for three moneths, and further till the next quarter Sessions, &c. But *quare* if this stat. be in force. *hic cap. 41*.

1. M. 1. c. 31.
P. 1. 1.

Prison; breakers thereof shall not be bailed. *West. 1. cap. 15*.

Prophesiers, to the intent to make disturbance within the Kings Dominions, every such offender being thereof lawfully convicted, for his first offence shall suffer one yeares imprisonment without baile; And for the second offence, shall suffer imprisonment without baile during his life. *P. Prophef. 1*.

1. El. cap. 31.

Purveyors, taking purveyance within five miles of either Univerfity, of Cambridge or Oxford, without licence, &c. and being thereof convicted, they shall suffer three moneths imprisonment without baile. See *antea*, *tit. Purveyors*.

1. & 1. Ph. &
M. c. 11.
P. Purv. 11.

Purveyors (or other officer) of any Nobleman, &c. taking any thing of any subject against his will, such offenders shall be committed to prison without baile, untill they shall redeliver the goods so taken, or the value thereof. See *ibid*.

1. H. c. 14.
P. Purv. 1.

Recusants. Persons suspected to be Jesuits, Seminaries or massing Priests, and being examined thereof (by any having lawfull authority in that behalfe) if they shall refuse to answer directly thereto, they shall be imprisoned without baile, untill they shall make direct answer thereto. 35. *El. cap. 2*.

15. 21.

2 Persons suspected, if they shall refuse to answer the Justice of peace upon oath, whether they be Recusants or no, they shall be committed to the common gaole, there to remaine without baile, untill the next Assises or Quarter Sessions. See *antea*, *tit. Recusants*.

1. Jac. 4.

3 Popish Recusants refusing to take the oath of allegiance (being lawfully tendred them) they shall be imprisoned till the next assises, or quarter sessions, as aforesaid. See *ibid*.

4 Every other person of the age of 18. yeares, refusing to take the oath of allegiance, shall be committed untill the next assises, or quarter sessions, as aforesaid. See *antea*, *tit. Oath*.

7. Jac. 6.

5 A woman Recusant convicted, and not conforming her selfe, be-
ing

ing

ing therefore committed to prison, shall there remaine without baile untill she shall conforme her selfe, &c. See *antea, tit. Recusants.* where baile is taken away.

3 Jac. 4.
7. Jac. 6. 6 A woman covert, refusing in the open Assises, or at the quarter Sess. of the peace, to take the oath of allegiance, she shall be committed to the common gaole without baile, untill she will take the said Oath.

1 Jac. 4. 7 If any woman or child under the age of 21. years, shall passe over the sea without lawfull licence, the master of any ship permitting the same shall suffer imprisonment 12. moneths without baile.

22 Geo. 75. 8 Recusants refusing to declare what armour, &c. they have, or if they or any other person shall hinder or disturbe the delivery of such armour to any person lawfully authorized to seise the same; every such offender shall have 3. moneths imprisonment without baile. 3. Jac. 5.

2 Recus. 8.
35. El. 1. 9 Recusants and Sectaries, which shall impugne the Kings authority in causes Ecclesiasticall:

10 Or that shall perswade others thereto, or from comming to Church to that end and purpose:

11 Or shall meet at any Conventicles, under colour of any exercise of religion (contrarie to his Majesties lawes:)

12 Or shall perswade any other to meet at any such Conventicles or meetings:

Every person which shall be lawfully convicted of any of these last 4. offences, shall be committed to prison, there to remaine without baile, untill they conforme themselves to come to Church, and make open submission and declaration of their said conformitie.

3 Jac. 4.
P. 50. 13 Persons absent from Church upon any Sunday, and not having whereon to be distrained for the forfeiture, shall be committed untill payment be made thereof. See *antea, tit. Recusants.*

Persons above the age of 16. yeares, which shall absent themselves from the Church by the space of one moneth, and shall be thereof lawfully convicted, shall forfeit for every moneth 20. li. And if he shall not be able, or shall faile to pay the same within three moneths after judgment thereof given, he shall be committed to prison, there to remaine untill he hath paid the said summe, or conforme himselfe to goe to Church, &c. 23. El. 1. P. 1. 4.

So of such persons as shall keepe any School-Master which shall absent themselves from the Church as aforesaid, or which shall not be allowed by the Ordinary; if such person shall not be able, or shall faile to pay the penaltie (sc. 10. li. for every moneth) within three moneths, &c. he shall be committed without baile, as aforesaid, *ibid.*

Persons convicted for Redisseisin, are not baileable. *Merton cap. 3. Fuz. 66. c.*

2 H. 5. 8. Rioters attainted of great riots, shall have one years imprisonment without baile. *P. Riots. 11.*

All persons convicted (by the view of the Justices, or upon their enquire, or otherwise) of any Riot, shall be committed untill they have paid their fine. See before *tit. Riots.*

39. El. 4. Rogues incorrigible, committed to the gaole, or house of correction, shall remaine there untill the next Quarter Sess. See *antea tit. Rogues.*

Servants,

where baile
is taken
away.

Servants, see *Labourers*.

School-master, that is a Recufant :

2 Or that is not allowed by the Ordinary ; and being of either of the said offences convicted, shall be imprifoned for one whole yeare without baile.

Sheriffes not making their election of Knights for the Parliament in their full countie, between the houres of 8. and 11. in the forenoone :

2 Or returning Knights for the Parliament, contrary to the statute : And being of either of the said offences attained before the Justices of afsife, (or in the Star-chamber, *Dyer* 168.) they shall be imprifoned for one whole yeare without baile.

Sheriffes, *Under-sheriffes*, or other persons, making any Warrant for the summons, arresting, or attaching of any person to appear in any court, not having the originall proceffe or Writ warranting the same, upon examination and prooffe thereof before the Judges of Afsife, or Judges of the Court, &c. such offenders and their procurers shall be committed to the gaole, there to remaine without baile, untill they have payed (among them) x.l. to the party grieved, and his costs and dammages, and also xx.l. a peece to the King. 43. *El. cap. 6.*

Souldiers, who have purloined their horfes, or harness, shall be committed without baile, untill he hath satisfied the party grieved, his executors or administrat. for such horse or harness. See before *tit. Souldier*.

Stock of the Shire. Refusers to pay their rates thereto, and not having whereon to be distrained, &c. shall be committed, till they have payd it. *Vide antea tit. Stock.*

Subsidie. If any person assessed to the subsidie shall not pay the same, by reason whereof his body shall be arrested, upon a Precept directed out by the Commissioners of the same Subsidie, &c. he shall remaine in prison without baile, untill he hath paid the same summe wherewith he is chargeable, and also for the fees of such arrest, &c. to him or them that shall execute such precept, xx.d. See the statutes of *Grants of Subsidies*.

Tithes. The defendant in a suit for tithes, that disobeyeth the Judges sentence, shall be committed without baile, untill he shall finde sufficient sureties by recognifance, &c. to obey and performe that sentence. *Vide tit. Tithes.*

Transportation. The Master or Mariners transporting any come, beere, herring, whitage, or wood, without Licence :

2 The owners of such things transporting more than they are licensed :

3 The Mariners carrying such things into any ship to be transported :

Every such offender shalbe imprif. one whole yeare without baile ; and yet see *antea tit. Transpor.* that every man may transport corn without licence (or danger, as it seems) it being at the prices there mentioned.

4 The Master or Marriners, transporting, or shipping to that intent, any leather, tallow, or raw hides, and being thereof convicted, shall have one yeares imprisonment without baile.

5 Transporters of live sheep :

6 And every person that shall bring, deliver, send, receive, take, or procure any live sheepe to bee conveyed out of any the Kings Domi-
gions,

nions, their alders, procurers, and comforters:

The offenders in either of the former cases, being thereof convicted, shall for the first offence suffer one whole yeares imprisonment without baile.

where baile
is taken a-
way.

7 The master of any ship, permitting any women or children under 12. years of age to passe over the seas without licence, shall suffer 12. moneths imprisonment without baile.

8 Aliens transporting Bowes or Arrowes: see *Aliens*.

If any man shall transport or convey any Horse, Mare, or Gelding, out of England without licence, &c. and bee thereof lawfully convicted, hee shall suffer imprisonment by the space of one whole yeare. 1. E. 6. cap. 5.

Treason. Persons committed for any treason touching the King, they are not baileable. *West. 1. cap. 15.*

Counterfeiters of money, or of the Kings Seale, are not baileable. *West. 1. cap. 15. Br. Mainp. 59.*

Vagabonds: see before *Rogues*.

Unlawed persons, taken for the same, are not baileable. *West. 1. 6. 15. & 23. H. 6. cap. 10.*

Wards. By the stat. of *West. 2. cap. 35.* if any person shall ravish (i.e. shall take and carry away) any Ward, the offender shall have 2. yeares imprisonment; and if he doe not restore, or doe marry the child after the years of consent, and be not able to satisfie for the marriage, he shall abjure the Realme, or have perpetuall imprisonment: And it is said, that it is at the election of the Justices to award the offender to abjure the Realme, or to have perpetuall imprisonment; and that if the Justices shall award him to perpetuall imprisonment, that the King cannot pardon him that imprisonment, for that it is in lieu of damages to the plaintife, and that imprisonment is an execution thereof, the which the King cannot pardon, without the assent of the party plaintife.

Waxe, and vessels of Honey; if any person shall counterfeit any the marks thereof, or shall mark them with any other mans mark, and shall be thereof convicted, he shall suffer 3. moneths imprisonment without baile.

Weights. Falsifiers or counterfeiters thereof, such offenders (after they be indicted thereof) shall be taken and imprisoned without baile, untill they be acquitted or attainted: and if they be attainted, they shall remaine in prison untill they have made fine and ransome, according to the Justices discretion. 9. H. 5. 8. *Parl. 2. Quare*, whether this statute be now in force.

Witches, Conjurers, Sorcerers, and such others, which shall take upon them to hurt any persons in body, though it be not effected:

2 Or shall take upon them to tell of any treasure, or goods (lost or stola) where it may be found:

3 Or shall take upon them to provoke any person to love:

4 Or shall hurt any cattell or goods thereby:

Every such offender being of any the said offences lawfully convicted, shall have one whole yeares imprisonment without baile.

Women. Taking of women (unmarried and under the age of 16. yeares) out of the possession of their parents, or other person, having lawfully the

keeping, &c. of them, and against their wils, the offender being thereof convict, shall be two yeares imprisond without baile, &c.

2 Taking away and deflouring such maid or woman childe, as afore-^{P. Womg.} said :

3 Contracting of marriage with such a maid, against the will of, or unknowing of or to the father of such maid, (if he be living) or against the will, &c. of the mother, having the custody and governance of such child :

The offenders in these two last cases, being thereof lawfully convicted, shall have five yeares imprisonment without baile, &c.

See more concerning women, *antea*, *Recusants*.

Recognisance. CAP. II 6.

A Recognisance is a Bond of record, testifying the recognisor to owe a certaine summe of mony to some other: and the acknowledging of the same is to remaine of record, and none can take it but only a Judge or officer of record.

And these recognisances, in some cases, the Just. of peace are inabled to take, by the expresse words of certaine statutes: but in other cases (as for the peace, and good behaviour, and the like) it is rather in congruitie, than by any expresse authoritie given them either by their commission, or by statute.

Note wheresoever any statute giveth them power to take a bond of any man, or to binde over any man to appeare at the Assises, or Sessions, &c. or to take sureties for any matter or cause, they may take a recognisance: yea, wheresoever they have authority given them, to cause a man to do a thing, there it seemeth they have (in congruitie) power given them to binde the party by recognisance to performe or doe it: and if the party shall refuse so to be bound, that then the Just. may send him to the gaole; for it is a rule in law, *Concesso uno aliquo, etiam id concedi videtur, sine quo prius concessum haberi nequit*: But yet inquire of this last case, for there is also another rule, *In generali concessione non veniunt ea, quae quis non esset verisimiliter in specie concessurus*.

I will here set downe onely some particulars where the Justices of peace (out of their sessions) may take a Recognisance.

One Justice of peace may take a recognisance for the peace.

Also one Justice of peace may take a recognisance for the good behaviour (by the commission:) and these the Justice of peace may take, either upon discretion, or upon complaint made to him, or upon a *Supplicavit* delivered to him.

One Justice of peace may bind by recognisance such as doe declare any thing against a felon, to appeare at the Assises, or sessions, there to give evidence against the offender; and so in divers other cases.

One Justice of peace may bind by recognisance such as keepe any common houses or places for unlawfull games, that they keep the same no longer. See *antea*, *tit. Games, &c.*

And also such as play at unlawfull games, contrary to the statute of 33. H. 8.

33. *H. 8. cap. 9.* that they use the same no more.

One Just. of peace may bind over persons suspected to use Logwood in dying; and such as can discover the same. See *antea, tit. Dying.*

One Just. may bind by recognisance takers of Partridges, &c. and hawkers in corne, to appeare at next sessions to answer their said offences. See *antea, tit. Partridges.*

One Just. of peace may bind by recog. any person convicted for taking or destroying any feafants, partridges, fowle or hare, that they offend not thereafter in any the particulars any more.

Also they use (by way of prevention) to bind trannellers for larks, that they shall destroy no partridges, &c. *Quere* of this, how it is warranted. See *postea tit. Warrants.*

But the binding of trannellers in this sort seemeth rather to do hurt than good, in that it doth inable or tolerate the use of trannelling in the night time, whereby many partridges are secretly taken and killed; whereas any two Justices of peace may more legally prevent that night-taking and destroying of partridges, by taking away all such nets, where they shall see cause; the which they may doe by force of the statute, 7. *Jac. c. 11.* which see here before, *tit. Partridges.*

I have knowne sundry Proclamations, authorizing and commanding the Justices of peace (at or before the beginning of the Lent time) to conyent and call before them all Taverners, Inne-holders, Alehouse-keepers, keepers of ordinary tables, and other victuallers within the precinct and rule of the said Justices; and to take bonds (by recognisance) with sufficient sureties of every of them, and in good summes of money to the Kings Majesties use, that they shall not dres any flesh in their houses in the Lent time for any respect, nor to suffer it to be eaten there.

One Justice of peace may binde by recognisance the master that shall misuse his apprentice, &c. to appeare at the next sessions, &c. See *antea, tit. Apprentices.*

Two Justices, &c. may take recognisance of Alehouse-keepers, for keeping good orders, &c. See before.

They may bind by recognisance an Alehouse-keeper (committed for victualling without licence) that he shall keepe no more an Alehouse. See *antea, tit. Alehouses.*

Two Justices, &c. may baile prisoners, and upon such bailment they are to cause the prisoners to find sureties for their appearance, &c. which must be done by recognisance. See here, *tit. Bailment.*

They may binde the Overseers of cloth by recognisance, to see the statute observed. See hereof *antea, tit. Cloth.*

Also two Justices of peace may bind by recognisance the Defendant in a suit of tithes, to obey the sentence of the Judge. See *antea, tit. Tithes.*

Whether the Justices of peace may bind an offender against a penall statute, to appeare and answer his fault at the sessions: see hereof *postea, tit. Warrants, cap. 117.*

31. H. 8. 39.
2. Accomp. 1.

Note that every obligation and recognisance taken by Justices of peace, must be made to the King, and shall be made by these words, *Domino Regi*, upon paine of imprisonment of any person that shall take it otherwise:

And all such bonds or recog. shall be in the nature of a Statute Staple, to all intents. See hereof *postea*, *iii. Recognisances*, cap. 123.

A Justice of peace can take no recognisance, but onely for such matters as concerne his office. See hereof, *iii. Surety for the peace*, *antea*.

Note also, that a Recog. taken by a Just. of P. is a matter of record, presently, so soon as it is taken and acknowledged, although it be not made up, but onely entred into his booke; nay although it be not entred, as it seemeth. See *Stamf. 77. a. & Br. Record. 58.* such a matter.

If a Justice of peace shall take a recognisance where he hath no authority, it seemeth void. See *hic* 155.

And these Recognisances taken by the Justices of peace are to be certified by them at their next quarter Sessions: except Recognisance taken of such as shall informe against felons, and upon bailment of felons, which by statute they are appointed to certify at their next generall gaole delivery. See *antea*, *iii. Felony*.

For the formes of recog. See hereafter, *iii. Recognisances*, cap. 123.

Warrants. CAP. 117.

NOW concerning the Precepts, or warrants, to be made by the Justices of peace.

By Parol.

The Justice of peace (seeing that he is a Judge of Record) his precept or commandment by word of mouth (in some cases) is as strong as his precept in writing. Lamb. 1.

And therefore the Justice of peace, upon any riot done in his presence, may command the rioters to be arrested, and cause them to finde sureties for their good behaviour. 14. H. 7. 14.

So upon an affray, assault, threatening, or other breach of the peace done in his presence, the Justice of peace may command by word, the officer being present, or his owne servant, to arrest such offenders to finde sureties for the peace. See before, *iii. Suretie for the peace*.

And where the Justice of peace commandeth one being present to arrest another that is also in his presence, though that commandment bee by word onely, it is good, and it is reputed as an arrest made by the Justice himselfe, he being present when the arrest is made. *Br. Ex. impris. 33.* See *hic* cap. 8.

But the Just. of P. cannot command by word to arrest another being out of their presence; neither may one in the absence of the Justice arrest another upon his command by parol, but it must be by a precept or warrant in writing, by the greater opinion of the Justices. 14. H. 7. 3. Br. peace 7.

And yet in case of rioters, the Justice of peace may by word command his servants to arrest them, in the absence of the Justice, by the opinions of *Vineux* and *Tremale*, Justices. See hereof *antea*, *iii. Riots*. 14. H. 7. 20.

By writing.

Next, their warrant or precept by writing, ought to be under their hand and seale, or under their hand at least. See *hic* *infra*.

To form.

And if it be for the peace, or good behaviour, or the like, where sureties are to be found or required, there the warrant ought to containe the speciall

all cause and matter, whereupon it is granted, to the intent that the partie (upon whom it is to be served) may provide his sureties ready, and take them with him to the Justice of peace, to be bound for him: but if the warrant be for treason, murder, or felony, or other capitall offence, or for great conspiracies, rebellious assemblies, or the like, it needs not containe any speciall cause, but there the warrant of the Justice of peace may be, to bring the party before him to make answer to such things or matters generally, as shall be objected against him on the Kings Majesties behalfe: and this is

Crom. 148. now the common usage, by the report of *M. Crompton*.

And I once received a warrant, brought me by one *Thomas Evans* (a Pursivant or messenger of his Majesties chamber) under the hand of the right honourable *Tho. Lord Ellesmeere*, late Lord Chancelour of England, for the apprehending of one *James Malin*, for a matter of contempt; and the said warrant was in generall words, *sc.* to answer to such matters as were to be objected against him, without any speciall cause therein mentioned.

1 Jac. Also I saw another war. granted under the hand of *Poph.* chiefe Justice, to bring one *Edmonds* (of Barnewell by Cambr.) before him, to answer to such matters as he had to object against him, on the Kings Majesties behalf, without any speciall cause or matter therein set downe.

The like forme you shall find in the booke of *Enries, tit. Attachment: Non omittas, &c. quin attach. E. H. &c. Ita quod habeas corpus ejus coram Justic. nostris ad Assisas in com. suo capiend. assig. apud W. in O. Rab. Sancti Mich. ad respon. nobis de hiis quæ sibi ex parte nostra tunc ibidem objiciuntur, & ad faciendum ulterius & recipiend. quod Curia nostra de eo consider. in hac parte, &c.*

But it is not safe for a Justice of peace to grant out his warrant with a blanke, for about 30. *Eliz.* one wrote to Sir *J. R.* a Justice of peace, to send him a precept or warrant with a blanke, that hee might put therein one whom he would attach upon suspition of felony, and the Justice of peace did so, (granting a warrant with a blanke, where he neither knew the parties name, nor the matter) and for this the Just. was fined in the Star-chamber, as *M. Crompton* reporteth, *Author. des. coris. 34.*

Also the warrant of the Justice of P. would be under the Seale of the said Justice, for every Just. of P. (being a Judge of Record) hath a Seale of his office, and when he maketh a warrant under his seale to the officer, then the officer ought to give credence to the Seale, for that is his authoritie, *per. Brudnell. 14. H. 8. 16.*

14. H. 8. 16. Lamb. 99. Againe, the warrant of the Justice of peace is the better, if it bare date of the place where it was made, and it must expresse the yeare and day when it was made. See *21. H. 7. 22.*

Flo. 37. A Justice of peace who is dwelling out of the countie, granteth his warrant to be served within the County, the officer cannot carry the party out of the County to the Justice of peace who made the warrant, but must carry him before some other Just. within the countie.

Quære whether such a warrant be good or no.

First, for that a Justice of peace hath no authoritie, but in the countie where he is a Justice, and in commission. See *amea, cap. 6.*

And again, for that the date of the place seemeth to be materiall by the bookes 14. H. 8. afore said, & 21. H. 7. 22. Br. fx. imp. 12.

The Just. of peace may make his warrant to bring the party before himselfe, and then the officer needs not to carry the party before any other Justice. And yet upon a warrant for the P. granted *ex officio*, the usuall manner is otherwife. See *antea*, iii. *Suretie for the peace*. Br. Peace 9.
Co. 5. 59.

Also the Justice of peace may in some cases make his Warrant to attach the offender to be at the next sessions of the Peace, there to answer his said offence, &c. See *antea*, iii. *Counterfeiners*; & *postea*, *Warrants*, cap. 121.

If a Justice of P. shall make his warrant to the Sheriffe to attach one, and to bring him to the next Sessions, there to finde Sureties for the peace, &c. it is good. *Crompt.* 135, 136.

So if the Justice shall make his warrant to warne a man to appeare at the next Sessions, there to give in Evidence for the King: And where the Justice shall command one by his warrant to bee or appeare at the next Session, &c. if the party doe not appeare, then from that Sessions there shall goe out a precept to attach him for such his contempt. *Crompt.* 123.

For what
cause.

A Justice of peace (*ex officio*, by the first *Assign.* in the Commission) may grant his warrant to arrest or attach one that hath broken the peace, or committed other misdemeanor against the peace, to find sureties for the peace or good behaviour, as the case shall require.

Also the Justices of peace in divers cases doe use to grant their warrant against a man for his neglect, or other default, as for refusing to pay town-rates, and the like: And such warrant may be either to attach the offender to be at the next sessions, there to answer, &c. or else to bring the offender before the said Justice, or any other Justice, &c. who, finding cause, may binde such an offender to appeare at the next Sessions to answer the said default.

Also wheresoever any statute doth give authority to the Justices of peace to cause another person to doe a thing, there it seemeth they have power given them (of congruity) to grant their warrant to bring such person before them, that so they may take order therein. See *antea*, iii. *Recognition*, cap. 116.

But I find it much controverted, whether a Just. of peace may grant a Warrant to attach persons suspected of felony, or against offenders upon a penall statute, unlesse such persons or offenders be first thereof indicted; for that the Justice of peace, as he is a Judge of record, so it is said, he must have a Record, whereupon he doth award his proceffe or precept. 14. H. 3. 16.
Br. Peace 4.
See Br.
Com. 3.

For the first, some hold that the Justice of peace may grant his warrant to attach persons suspected of felony, for that it seemeth by the first *Assignarius*, in the commission, and by the statute of 5. Ed. 3. 14. that any one Justice of peace may cause the Constables to arrest and imprison offenders suspected of felony, &c. And how shall the Just. of P. cause this to be done but by his warrant or commandement?

Againe, if a felony be done, there is no doubt but that every private man without a warrant may arrest whomsoever he suspecteth of it, being

ing a man of evill fame, &c. See hereof *cap. 118. sit. Arrest.* But if the offender being pursued shall resist, *quare* who shall be aiding to a private man, whose goods are stolne, and who suspecteth another to have stolne them, either to search for his goods, or to apprehend the party suspected, if the Justice of peace (by his warrant) shall not command the Constable to aid him therein. If it be objected that the Constable may doe all this of his owne authoritie, (upon request to him made by the party robbed) be it true, yet we finde by common experience, that the Constables, without the Justices warrant therein, are, for the most part, both very fearefull, and also remisse herein, as neither knowing their owne authoritie, nor the danger.

See antea, tit
Examination
& 2. H. 7. 15.
16.
pro & contra.

Lamb. 193.

Besides, this is no new thing, for there is such a president in the old book of Justices of peace (*impress. 1561. fo. 41. a.*) yea, it is the common practice at this day, and it seemeth to be very serviceable; and of two evils the lesse is to be chosen, *sc.* that an offender, or suspected person, should be imprisoned for a time (though sometimes wrongfully) than that one which hath committed felony should escape unpunished.

14. H. 8. 16.
Br. Peace 6.
Br. ix imp. 8.
& p.
Co. 10. 76.

And yet by the opinion of the Court 14. H. 8. a Justice of peace cannot make a warrant to arrest a felon, unlesse he be indicted of felonie, (or that the Just. himselfe hath suspicion of the felon.) But if the Constable, or other officer, shall serve such a Warrant, he shall justify the same, though the Just. did erre in the awarding thereof. See 24. E. 3. 9.

Lamb. 191.
Crom. 197.
The incon-
venience
thereof.
See Lamb.
191.

Next, for the Justices of peace to bind over, or to grant a Warrant against offenders, upon any penall statute, to appeare at the Sessions, to answer to their offence or fault, though such statute bee within the power of the Justice of peace, yet such warrant, or binding over of such offenders, may seeme not warranted, unlesse it be specially so appointed in the statute: as it is by the statutes of 5. El. cap. 4. 23. El. 10. 39. El. 11. 33. H. 8. 1. See antea, tit. *Counterfeiters, Dying, Labourers, Partridges, and Sacraments.*

But such offenders ought first to bee indicted, and thereupon proccesse from the Sessions is to bee awarded against them untill they come in, &c.

Crom. 138.
Lamb. 191.

And yet there be sundrie presidents of attachments made from one Justice of peace against labourers and servants, that shall refuse to serve, or that shall depart out of their service, &c. contrary to the statutes, to be before the Justices at their sessions, to answer to their said defaults. But these may seeme also to have bene warranted, and so appointed by the statute of labourers, made an. 25. E. 3. cap. 6. which statute is now repealed by the statute of 5. El. 4.

Also it is usuall, by way of prevention, to bind by Recognisance such as doe trannell for larkes, that they shall destroy no partridges; as also to bind by recognisance, Butchers, and all Victuallers, that they shall not kill nor dresse any flesh in Lent time, contrary to the lawes: And for these purposes the Justices of Peace doe grant out their warrants to convent the said persons before them: for victuallers (*sc.* Taverners, Inne-holders, Alehouse-keepers, keepers of ordinary tables, and other victuallers) I have knowne sundry proclamations which seem to warrant the Justices of peace

peace therein: but for the other, what Law or warrant there be for it I know not, untill the offender be convicted, see *hic in. Partridges*. Yet see *antea, cap. 66.* where the Justices may in some cases grant their warrants against offenders upon penall statutes. But here the Justices have power to heare and determine out of their Sessions.

Also where the offence prohibited by such a statute amounteth to the breach of the peace, or good behaviour, there it seemeth the Justice may (either upon discretion, or complaint of such an offence and breach of the statute) grant out his warrant, and binde over the offender to the next Quarter Sessions, &c. to answer his said default, and in the meane time to be of good behaviour. See *hic cap. 11. 17. & 31. Servants assaulting their Master.*

To whom directed.

The Justice of peace may direct his precept or warrant to the Sheriffe, Bailiffe, Constable, or other officer; or to any other indifferent person by name, though he be no officer, yea, to any person that he shall think meet; but yet the safest way is to direct it to the Constables, or to some other sworne officers. 14. H. 8. c. 1.
R. Peace 6.

A warrant directed by the Just. of peace to the Constable, or other sworne officer, and to a stranger, who is no officer, and the warrant is made *conjunctim & divisim*, and is delivered to the stranger, who executeth it, all this is good.

A warrant directed by the Just. of peace to two men joyntly, to arrest another, &c. yet any one of them alone may doe it. Comp. 15.

A warrant directed by the Justice of peace to the Sheriffe, hee may by word command his under-sheriffe, bailiffe, or other sworne or knowne officer to serve it, without any precept by writing.

And so the Sheriffes servant, or other person, by the Sheriffes commandement, and as servant to the Sheriffe, may serve or execute such warrant, without any precept by writing. See *Br. Faux Imprif. 43. & Trespassse 339.* Lamb. 91.

But otherwise if the Sheriffe will command another man (that is a stranger) to serve it, he must deliver him a precept in writing, otherwise a writ of false imprisonment will lye for the arrest.

A warrant directed by the Justice of peace to the Sheriffes bailiffe, or to the Constable, or to the Justices servant, or to an estranger, to arrest one, &c. such person (to whom that warrant is made) must serve it him selfe; for these can command none other to doe it, neither by word nor writing, nor make any deputy. 3. E. 4. 4.
14. H. 7. 2. b.
20. H. 7. 11.
21. H. 7. 4.
Coges.

The officers dicit.

The officer to whom any warrant shall be directed and delivered, ought with all speed and secrecie to seeke and finde out the partie, and then to execute his said warrant.

A sworne and knowne officer (be he Sheriffe, under-sheriffe, bailiffe, or constable, &c.) needs not to shew his warrant to a man, when he commeth to serve it upon him, although he demandeth it: But if the Just. will direct his warrant to his servant, or to another (who is no sworne officer) to serve it, they must shew their warrant to the party, if hee demand it, or otherwise the partie may make resistance, and needs not to obey it. *Br. Faux Imprif. 23.*

But

Cod. 54.
Reg. 21.

But a sworne and knowne officer, if he will not shew his Warrant to the partie, yet he ought (upon the arrest) to declare the contents of his warrant, &c.

Cod. 52.

And an officer giveth sufficient notice what he is, when he saith to the party, I arrest you in the Kings name; &c. And in such case the party at his perill ought to obey him, though he knoweth him not to be an officer; and if he have no lawfull warrant, the party grieved may have his action of false imprisonment against him.

Dym. 244.
P. 20. 244.
Lamb.

If an officer do arrest a man for the peace, or the like, before that he hath any warrant, and then afterwards doth procure a warrant (or a warrant commeth after to him) to arrest the party for the same cause, yet the first arrest was wrongfull, and the officer is subject to an action of false imprisonment. See the statute 43. *El. cap. 6.*

Where there be two or three knowne by the name of *I. S.* of *D. Yeo-* man, and upon a warrant (or other proccesse) granted out against one of them, another of them is arrested, an action of false imprisonment will not lye against the officer for this; for the officer is not bound at his perill, to take notice which of them is the offender, &c. And perhaps no particular offence is mentioned in the warrant, *Tamen vide L. 5. E. 4. fo. 51. & 84. pro & contra. & 11. H. 4. fo. 90. contra, ideo quare.*

Where a warrant is granted out against *I. N.* the son of *W. N.* and the officer thereupon arresteth *I. N.* the son of *T. N.* although in truth he be the same person that offended, & against whom the complaint was made, yet this arrest is tortious, and the officer subject to an action of false imprisonment. See the like matter, *10. E. 4. fol. 12. Br. Fx. imp. 38.*

The officer, upon any warrant from a Justice of peace, for the peace, or good behaviour, or in any other case where the King is a partie, may by force breake open a mans house, to arrest the offender, &c. See hereof *antea*, in the former title, *Forcible Entry, cap. 78.*

See Crom.
214. a. & 148

If an officer, or other person, hath arrested a man by vertue of his warrant, which he hath from a Just. of peace, and then taketh his promise that he wil come again to him such a day to goe to the Just. with him according to his warrant (and so letteth the party goe) who comes not again at the day appointed, it seemeth the officer cannot after arrest or take him againe by force of his former warrant, for that this was by the consent of the officer: But if the party arrested had escaped (of his own wrong) without the consent of the officer, now upon fresh suit the officer may take him again & again so often as he escapeth, although he were out of view, or that he shall flie into another towne or counry. See more, *postea. 31. Imprisonment, & L. 5. E. 4. f. 12. Br. Fx. imp. 18.*

Ca. 14. 52.

Where an officer hath received a warrant, he is bound to pursue the effect of his warrant in every behalfe, or otherwise his warrant will not excuse him of that which he hath done. See *antea. 31. Surety for the peace, cap. 69.*

31. H. 7. 39.

If an officer, having a lawfull Warrant to arrest another, shalbe resisted, or assaulted by the party, or by any other person, then may that officer justifie the beating or hurting of such persons; and others (upon his prayer) may and ought to aide the officer.

If

If a Justice of peace shall make any warrant for a matter wherein he hath jurisdiction, although it be beyond his authority, yet is it not disputable by the Constable, or other such officer, but must be obeyed and executed by the officer; as if the Justice of peace shall make his warrant to arrest one for the peace or good behaviour, &c. without cause, the officer shall not be punished for executing this: But if a Just. of peace shall make his warrant, to doe a thing out of his jurisdiction, or in a cause whereof the Justice of peace is no Judge, if the officer shall execute such a warrant, here he is punishable; for the officer is not bound to obey him, who is not judge of the cause, no more than a meere stranger: and so note that the officer is bound to take notice of the authoritie and jurisdiction of the Judge. See such a matter 22. *Aff.* 64. *Pl.* 394. *b.* *Cro.* 106.

24. H. 8. 16.
Br. Fr. imp. 2.
Lamb. 77. 9.

Co. 10. 76.
Crompt. 71.

If any man shall abuse the Justice of peace his Warrant, as by casting of it into the dirt, or treading it under his feet, &c. it seemeth he may be bound to his good behaviour therefore, and may also be indicted and fined therefore, for it is the Kings proceffe.

Crompt. 14.

When any person commeth before a Justice of peace, by force of any warrant for the peace, good behaviour, or for a riot, or the like, the partie must offer sureties, or else the Justice may commit him. See *antea*, *iii.* *Suretie for the peace.*

If a Justice of peace shall grant his warrant to one to apprehend another for murder, robbery, or felony, it shall be safe for the Just. upon the delivery of his said Warrant, to take (upon oath) the examination of the said party that requireth the Warrant, or at least, to bind him over by recog. to give evidence at the next Gaole delivery, &c. against the offender, lest that afterwards when the offender shall be brought (by the officer) before the Just. upon his said warrant, or else happen to yeeld himself to the said Just. then the party that procured the Warrant be gone: for by credible report I am informed, that one having procured a Warrant from a Justice of peace in Suff. against another for a robbery done upon the high-way, and the Justice upon the delivery of his Warrant, not having bound over the complainant to give evidence, nor taken his examination, as aforesaid, that at the next Assises and Gaole delivery, the party charged with the robbery, came and offered himselfe to the said Justice of Peace, who immediatly acquainted Sir *Thomas Flemming* (then Lord Chiefe Justice and Judge of Assise there) with the whole matter, but the said Judge much blamed the said Justice of peace for not having bound over the said complainant at the first when he granted him the warrant, and charged the said Just. of peace at his perill, presently to send for the party complainant, to come to give evidence, &c. And further directed the said Justice of peace presently to binde over the party charged, with good sureties for his attendance and appearance.

Arrest

Arrest, and Imprisonment. CAP. 118.

AN Arrest is the apprehending and first restraining of a mans person, depriving it of his own will and liberty, and may be called the beginning of Imprisonment.

Imprisonment is where a man is arrested against his will, or is restrained of his libertie, by putting him into the gaole, cage, or stocks, or into some house, or otherwise by keeping him in the high street, or open field, so as hee cannot freely goe at libertie when and whither hee would.

If the Constable, or other officer, (upon a warrant received from a Just. of peace) shall come unto the party, and require, or charge, or command him to goe or come before the Justice, &c. this is no arrest or imprisonment: and upon a warrant for the peace, the officer ought first to require the party to goe before the Justice, before he may arrest him. See hereof, *antea, iii. Surety for the peace.*

But this arrest (being in execution of the commandment of some court, or of some officer of Justice) is expressed in their writs, precepts or warrants, by these words, or the like, *se. Capias, Attachias, &c.* to attach, arrest, take, bring, or convey, or cause to be attached, arrested, &c. all which words doe imply the taking and laying hold of the person.

To this arrest all lay persons (under the degree of Barons, or Peeres of the realme) be subject, and that by warrant from the Justices of peace; as sons, you may see here before; *iii. Surety for the peace, cap. 68.*

But the Justices of peace are not to grant their warrants for the peace, or the like, against any Nobleman: and yet if a *Capias* or attachment shall be awarded against a Baron or Peere of the realme, from the Kings Justices at Westm. for a contempt, or in case of debt or trespassse, the officer without any offence of law may execute the same, for that the officer is not to dispute the authoritie of the Court.

Ecclesiasticall persons also may be arrested, and that by a Warrant from the Justices of peace in some cases. See hereof, *iii. Surety for the peace, cap. 68.*

A woman covert may be imprisoned by the Just. of peace, for a force or a riot committed by her. See *antea, iii. Forcible Entry, and Riots, cap. 77.*

But otherwise of Infants, in such cases (as it seemeth) see *ibid.*

Yet if an Infant cannot finde sureties for the peace, being demanded against him, hee shall bee committed untill hee hath found sureties. See *antea, cap. 68.*

An Infant (though of yeeres of discretion, yet hee) shall suffer no imprisonment, nor other corporall paine, for any offence committed or done by him against any statute, except that an infant be expressed by name in the statute. *Br. Imprif. 101. Covert 68. Plow. 364. Doct. & Stud. 147, 148.*

The liberty of a man is a thing specially favoured by the common law of this Land; and therefore if any of the Kings subjects shall imprison another without sufficient warrant of him, or his law, the party grieved may

may have his action, and shall recover dammages against the other; and the King also shall have a fine of him: for imprisonment of another without offence of the law, is one of the Kings royall prerogatives, and only annexed to the Crowne.

Also by the statute of *Magna Charta*, made 9. H. 3. c. 29. no freeman shall be taken or imprisoned, &c. but by the lawfull judgement of his equals, (sc. upon his conviction (for some offence) by the verdict of a Jurie of 12. good and lawfull men) or by the law of the realme. See the *Petition An. 3. Caroli Regis.* P. Accus. 13. E. 3. c. 9.

And by this statute of *Magna Charta*, every arrest or imprisonment, and every oppression against the law of the Land, is forbidden; and if any Judge, Officer, or other person, against the law, shall usurpe any jurisdiction, and by colour thereof, shall arrest, imprison, or oppress any man, it is punishable by this statute. See Co. 10. 75. Co. 10. 74.

Note, that all jurisdiction ought to be either by Charter, or by Prescription. Co. 11. 99.

Also by the statutes of 25. Ed. 3. cap. 4. 28. E. 3. cap. 3. & 42. E. 3. cap. 3. no person shall be taken or imprisoned, nor put to answer, unlesse it be by indictment or presentment (of a Jury) before Justices, or by matter of Record, or by due processe made by writ originall at the common law. See *P. Accusation 1. & 42. Ass. 5. And Br. Faux impris. 30. 2. H. 4.* the body of a man shall not be taken but by Processe out of a Court of Record.

A Commission to arrest or take a man (and his goods) was holden to be against Law, for that this ought to be either upon indictment, or suit of the partie, or other due processe of Law, *Br. Commiss. 15. 16. & Faux impris. 9. & Indisment 38. 42. Ass. 5. 12. 24. E. 3. 9. Co. 5. 64.*

And so note, that no man shall be arrested for debt, detinue, trespassse, or other cause of action, but only by vertue of a Precept or commandement out of some Court of Record.

Neither shall any man commit another to prison, except he be a Judge of Record. Co. 10. 103.

But yet for misdemeanors done against the kings peace, (as for Treason, felonie, or breaking of the peace, &c.) the offenders as well by the Common Law, as by divers statutes, may be arrested and imprisoned, by the officers of Justice, and sometimes by private persons, (as hereunder followeth) without either Presentment, Processe, precept, warrant, or other commandement. And these being by the Law of the Realme, are warranted by the aforesaid stat. of *Magna Charta.* See Co. 3. 11.

By a private man.

And M. *Brañon lib. 5. in fine*, saith thus, *In criminalibus causis ubi sequi debet capitale Judicium, vita viz. vel mutilatio membrorum, non sequitur Attachamentum aliquod, sed corpus talis (quicumque fuerit ille) ab omnibus arrestetur, qui sunt ad fidem Domini Regis, sive inde Preceptum habuerit, sive non habuerit.*

And yet you must observe, that for the arresting of the body of a man in such cases, there must bee some just cause, or some lawfull and just suspicion at the least: And therefore where a man is indicted of felonie, that is a good cause for any man to arrest him. But if an appeale of

of felony be commenced against another, that is no sufficient cause, for it is but a private suspicion, &c.

10.E.4.17. Also every private man may arrest another, whom he knoweth or seeth to have committed a robbery, manslaughter, or other felonie, and may deliver him to the Constable of the Towne where such an offender is apprehended; or in the Constables absence may imprison and set him in the stocks; and if there be no stocks there, it seemeth he may carry the offender to the next Towne, and deliver him to the Constable there: See *9. Ed. 4. 28.* or else he may carry him before a Justice of peace, by him to be examined, and sent to the gaole, there to abide, untill the next Assises, or Sessions of the peace, &c.

Finch. Bar. 101. Also when a felony is committed, every man may arrest suspicious persons that be of evil fame, &c. and if such person shall make resistance, the other may justifie to beate him.

But for the arresting of such suspicious persons, note, that there must be some felony committed indeed.

28d. 4. 28. Also the party that shall arrest such suspected person, must have a suspicion of him himselfe, and for the same felony, or otherwise suspicion generally is no cause to arrest another. See *antea, tit. Examination. 5. H. 7. 4. & lib. Intra. tit. fx. impris. div. 5.*

So that when any felony is done, every man that shall suspect another to be guilty thereof, may arrest him, See *5. H. 7. 4. b. Br. Faux impris. 16.*

Any man suspecting another of a felony committed, or onely intended, may arrest him, so as thereupon he commits him to the Gaole, or carries him before a Justice of peace. *9. E. 4. 26. 20. E. 4. 6. Vide Finch 127. & hic cap. 113.*

Also when a felony is committed, the common voyce and fame that *I. S.* did the felony, is sufficient cause for any man to suspect him, and to arrest him, *ibid.*

Also, Huy and cry after *I. S.* for felony, seemeth to be sufficient cause to arrest him, though there be no felony committed, *ibid.*

Also, Huy and cry is sufficient cause to arrest any suspicious person. *Br. fx. impris. 25.*

So when a felony is done, to be in company of the offenders, is sufficient cause to arrest him.

9. Ed. 4. 28. Nedham. So to live idly and vagrant. *Br. fx. imp. 22. See antea.*

29. E. 3. 19. 1. H. 7. 4. Also every man may arrest such as apparently goe about to commit any felony, and may imprison them. *Finch 127.*

Also, upon huy and cry for stolne goods (*sc.* for a horse, or bullocks, &c. of such a colour, &c.) if *A.* be taken driving or leading, &c. such a horse, or such a bullocke, or having such other stolne goods about him, though he be a man of good name and credit, yet every man may apprehend and stay *A.* hereupon, and may deliver him to the Constables, by them to be set in the stocks, or safely kept, untill they can carry him before a Justice of peace, that so he may be delivered by course of Law.

10. H. 7. 12. If any man shall bee dangerously hurt in an affray, (or otherwise) every man may arrest and imprison the offender, &c. What every private man may further do in an affray: see before, *tit. Affray.*

Unlawfull hunters in Parks, the Keepers or their servants, may for such offence justifie to arrest the offenders, and to cause them to depart, &c. *Lib. arbit. tit. fx. Imprisonment div. 12.*

Every man knowing of any that keepeth, or useth any gun, &c. contrary to the statute, may arrest them, and bring them to the next Justice of peace, &c. see *antea tit. Guns.*

Nightwalkers, being strangers, or suspected persons, watchmen may arrest them, & may stay them till the morning, &c. see hereof *tit. Watch, antea.* Yea, every man may arrest such Nightwalkers, for it is for the good of the common wealth. *4. H. 7. 18. Br. Faux imprisonment 15.* see the stat. of *Winch. 13. E. 1. & 4. H. 7. fol. 2. & 5. H. 7. fol. 5. a.* Co. g. 8. b.

But in all these cases before, where a private man shall arrest another, he ought thereupon to commit the prisoner to the gaole, or to carrie and deliver him to the Constable, or to some other officer, &c. see *20. E. 4. 6. Finch 127.*

By officers. The Sherife, Bailifes, Constables, and other the Kings Officers may arrest and imprison offenders, in all cases where a private person may, and without any writ or warrant.

Where a constable may arrest one, &c. see hereof, *antea, tit. Conservators of peace, Affray, Forcible Entrie, & Examination.*

A Constable being informed of a lewd man and woman that are together in incontinency, may take with him so many of his neighbours as he will, to arrest the said man and woman to finde sureties for their good behaviour. *1. H. 7. 7. 13. H. 7. 10. hic Cap. 75.*

If a man makes an assault upon the Constable, he may justifie to arrest him that makes the assault, and to carrie him the gaole for the breach of the peace, although the Constable be the party upon whom the assault was made. *5. H. 7. 6. Br. fx. imp. 41.*

The Justice of peace may arrest & imprison offenders in all cases where a private person may. See *Hic cap. 8.*

The Justice of peace (upon his owne motion and discretion, or upon complaint) may also grant out his warrant, for the arresting (or convening before him) of all such persons, as shall breake, or goe about to breake the peace, or as hee shall suspect to be inclined to breake the peace, and may commit them to prison, if they shall refuse to finde, or cannot finde sureties for to keepe the peace.

The Justice of peace (in divers cases) may in like sort grant out his warrant for the good behaviour, against offenders (as you may see before *cap. 75.*) and may commit them to prison for not finding sureties accordingly.

And these things the Justice of peace may doe by force of the commission, and of the statutes, *18. Ed. 3. c. 2. & 34. Ed. 3. c. 1.*

If one commeth before the Justice of peace, upon his warrant for the peace, good behaviour, or for a riot, or the like, the Justice needeth not to demand suretie of him, but may commit him, if he do not offer it. *Br. Peace 7.*

Also the Justices of peace upon their owne view, &c. of the offence, may imprison the offenders against divers penall lawes; as namely, such as keep common

common Alehouses without licence; offenders for unlawfull games, ryot-
ters, such as shall make any forcible Entries, or holdings of possessions,
&c. see for these before under their particular titles.

There be divers other offences, which by the statutes are committed to
the Justices of peace (out of their Sessions) to heare and determine; And
of which the offenders shall be convicted, sometimes upon their owne
confession before the Just. and sometimes upon examination and prooffe
of witnesses; In all which cases the said Just. of P. may convent the said of-
fenders before them (by their proces or warrant) and after such examina-
tion and conviction, they may imprison, or otherwise punish the offenders,
according as they are limited by the said statutes: See before *Hic cap. 66.*

Wheresoever the Justice of peace hath power, or authoritie given him
by any statute to bind over any man, or to cause a man to doe any thing, if
such person (being in his presence) shall refuse to be bound, or to doe such
thing, it seemeth such Justice may send such person to the gaole, there to
remaine till he shall performe the same. See hereof *antea, tit. Recogni-
sance.*

In what cases the Kings officer may breake open a mans house, for to
arrest an offender. See hereof *tit. Forcible Entry. Cap. 78.*

All men being required, ought to assist the Kings officers, to pursue, and
arrest offenders against the peace, &c.

If the partie against whom any lawfull Warrant is granted, shall make
resistance, or shall make an assault upon the officer, or shall fly; the officer
may justifie the beating and hurting of him, and may also imprison him
in the stocks for the same: But if the partie resisteth or flyeth, before he
be arrested, the officer cannot justifie the beating of him. *2. Ed. 4. 7. a.
Br. Tresp. 296.*

If the warrant were to arrest or take one that standeth indited of felony,
then may the officer justifie the killing of such a person, if hee shall resist,
or fle, or that he cannot be otherwise taken. See *hic antea, Homicide to-
lerated.*

None shall be imprisoned by any Justice of peace, but only in the com-
mon gaole, by the statute of *5. H. 4. & 23. H. 8. cap. 2.*

And therefore Justices of peace cannot commit felons to any of the
Counters in London, nor to other prisons which be no common Gaoles;
nor make a gaole of their owne houses.

And yet Justices of peace may commit to the stocks some offenders
against certaine penall statutes; As townsmen tipling in Alehouses, &c. See
hereof *antea tit. Alehouses.*

Persons refusing to work in hay & harvest time. See *antea, tit. Labourers.*

And in some cases the Justice may commit an offender to safe custodie
by his discretion. *Vide antea, tit. Preachers.*

Also in some cases the Justice may send offenders to the house of Cor-
rection, and there to be continued for any reasonable time, at the discre-
tion of the Justice. See *antea, tit. Rogues, & hic cap. 125. fine.*

The Sheriffe or gaoler may imprison a felon, or other prisoner in their
owne house, or in the common gaole at their pleasure. *Tamen quare, &
vide Cramp. 184.* that the gaole is the King prison, and that for causes

touching the King, offenders shall be sent thither.

The Constable (or other such officer) cannot imprison any man in his house, (as it seemeth) but in the stocks; and that not above such a reasonable time, as he may provide convenient aid safely to convey the Prisoner to the Justice, or gaole. *Finch.* 29. Ed. 4.
23. Ed. 4.
1. H. 4.

And yet in case of an Affray, &c. the Constable may for a time imprison the offender, being a man of quality, in the Constables owne house, or may commit him to some other safe custody. *Vide hic cap. 1.*

If a man commit felony in one County, and be arrested for the same in another Countie, hee shall bee imprisoned in that Countie, where he is taken. *Vide antea, tit. Felonie, & 11. E. 4. fol. 4. Br. fx. impr. 25.*

The Justice of peace, Constable, or other officer pursuing a felon into another County, takes him there; the felon shall bee committed to the gaole of the county where he was taken: for the Just. of peace or officer being out of his county, hath no more authoritie than a private man. *Vide antea, tit. Accessories & Felony. Br. fresh suit. 3. & Pl. 37. a.* 13. 2. 4.

Also if the Constable (or other officer) shall see an affray, and he coming to arrest them, the affrayors doe flie into another County, the officer (as every other private person) may pursue them into the other County, and may stay or arrest them there; but the officer cannot bring them out of that County, but must carrie the affrayors before some Just. of peace of the same County where they were taken, &c. But if the affray be in one towne, and the affrayors doe flie into another towne, or into a franchise or liberty within the same county, the officer may pursue them, and take them out of the franchise &c. by fresh suit. *Vide antea, tit. Affray.*

But if the Constable hath arrested one upon a warrant from a Justice of peace, and after the arrest the party escapeth (of his owne wrong) & fleeth into another county, the Constable may pursue and take him in the other county by fresh suit, and bring him before the Justice of peace upon whose warrant he was first arrested, as is seemeth. See *Crom. 172. 173. & antea, tit. Felony by Statute.* Sec. 1. 2. 4.
Br. Treas. 1.

If a prisoner taken in execution shall make an escape of his owne wrong, and shall flie out of sight, & into another County where the Sheriffe hath no power, yet the Sheriffe, &c. upon fresh suit, may take him againe in any other County, and he shall be still said to be in execution; yea without fresh suit, the Sheriffe, &c. may take him againe, and keepe him untill he hath agreed with him: otherwise, if the escape were by the consent of the Sheriffe, &c. *Co. 3. 52. Br. Escape 4. 12.*

Now for the conveying of prisoners to the gaole, it must be at the proper charge of the prisoners, if they have meanes or abilitie thereto; otherwise it must be at the charge of the towne where they are taken. *21. Jac. 28. & 3. Caroli 4.* 1. Jac. cap. 10.
P. Prison 7. 1.

And if a man be arrested for felony, and the Constable shall carry him to the Gaole, and the Gaoler will not receive him, the Constable must bring him backe to the towne where he was taken, and that towne shall be charged with the keeping of him untill the next Gaole deliverie, by the opinion of the Booke 10. H. 4. or the Constable or other party that arrested him, may in such case keepe the prisoner in his owne house, as it seemeth. 10. H. 4.
F. Ric. 1.

seemeth. Sec 11. E. 4. Br. Faux Imprif. 25. fine.

p. Prison 6.
4 Ed. 3. c. 10.

But the Gaoler denying to receive a felon by the delivery of any Constable or towneship; or taking any thing for receiving such, shall be punished for the same by the Justices of gaole dilivery.

Co. 8. 119.
Flo. 17. b.

When a statute doth appoint imprisonment, but limits no time when the offender shall be imprisoned, then he is to be imprisoned presently; as in case of a force, the Justices of peace upon view thereof, ought to commit the offenders presently; for after they may not commit them. The Time.

Crom. 171.

Also when a statute doth appoint imprisonment, but limits no time how long, there the prisoner must remaine at the discretion of the Court.

Where a statute doth ordaine, that an offender shall be imprisoned at the Kings pleasure. *Vide antea*, tit. Bailment.

Where a statute ordaineth that a prisoner shall not be delivered without the Kings speciall commandement, and that upon a fine to be made to the King; who may asseffe the same fine, and deliver him: see 18. H. 8. 1.

Br. Imprif.
100. Co. 11.
43.

But imprisonment to be inflicted by the Justice of P. almost in all cases (except for the Peace, the good behaviour, or for felony, or higher offences) is but to retaine the party untill he hath made fine to the King for his contempt or offence; and therefore if he shall offer to pay his fine, or shall find sureties by recog. to pay it, he ought to be delivered presently, 2. Mar. 1.

Co. 3. 100. &
987.

Now for the manner of imprisonment, it seemeth generally in all cases where a man is committed to prison, especially if it be for felony, or upon an execution (or but for a trespassse, or other offence) every gaoler ought to keepe such his prisoner, *in salva & arcta custodia*; *Salva*, sc. that he ought to be imprisoned so surely, as that he cannot escape; *Arcta*, in respect that he ought to be kept close, without conference with others, or intelligence of things abroad. The manner.

Co. 3. 44.

And therefore if the gaoler shall licence his prisoner to goe abroad for a time, and then to come againe; or to goe abroad with a keeper, though he come againe, yet these are escapes: and if the prisoner were in for felony, this is fineable in the gaoler at the least, if it be not felony; and if the prisoner were in upon an execution, this is so penall to the officer, as that he shall be charged for the debt; and if the prisoner were in but for a trespassse, yet the officer is fineable: for imprisonment was ordained for a punishment of offenders, and in terror of all others, *ut pœna ad paucos, metus ad omnes perveniat*. *Vide antea* tit. Felony by statute. Cap. 106.

1. R. 3. c. 12.
7. H. 4. cap. 4.

And yet see Co. L. 260. That imprisonment must be *Custodia*, & non *pœna*; for *Carcer ad homines custodiendos, non ad puniendos, dari debet*: But yet it seemeth meet and just, that it should be *pœna*, as well as *Custodia*, sc. for Malefactors, that it should be a punishment to them, and a terror to others; and for debtors, that they may the sooner pay or take order with their Creditors.

For, as one saith, *Maxima illecebra peccandi impunitatis spes*, A great impulsive cause of offence, is the hope to escape unpunished: And so a great cause that Debtors care not to pay, nor to take order with their Creditors, is their hope to escape imprisonment, or of too much favour & liberty in prison.

Also (by the law) those which are in execution, ought not to goe at liberty within the prison, nor abroad with their keeper, 24. H. 8. much lesse in cases of felony, or of higher offences. Dyer 146.
Co. 146.

Also by the statute of West. 2. ca. 11. Accomptants, & such as are in execution, the Sheriffe or Gaoler may put irons or fetters upon them : & yet if the gaoler shall imprison a man so straitly, by putting him in the stocks, or putting more irons upon him than is needfull, or keepeth his victuall from him, whereby the prisoner becommeth decrepit, lamed, or otherwise diseased, he shall have an action of the Case against the Gaoler : and if the Gaoler shall keepe his prisoner more streight than of right he ought to doe, so that the prisoner dyeth thereof, this is felony in the gaoler. *Hic cap. 107. Verbo Gaoler.* Co. 146.
P. Antiqua.
Fitz. 91. b.

Also the Constable or other such officer, that shall imprison in the stocks, any offender, for felonie or suspicion thereof, may locke the stocks, and if need be, may also put irons on him, as it seemeth; and when he conveyeth him to the gaole, or to the Justice, may pinion him, or otherwise make him sure, so that he cannot escape.

It seemeth by *Britton, fol. 17.* that by the common Law (before the statute of West. 2.) none should have irons put on them, but such offenders as were taken for felonie, or trespassers in Parkes. But the words of the statute of West. 2. cap. 11. are generall, *quod Carceri mancipentur in ferris*, which word, *Carceri*, seemeth to signifie any persons imprisoned for any cause, (or any persons worthy of the prison,) and is not to be restrained to Accomptants onely. See *Cok. 3. 44.* Kil. 69.

Also by the statute 7. *Jacobi Regis*, all Rogues, Vagabonds, sturdy beggers, and other idle and disorderly persons, sent to the house of correction, may (by the master of such house) be punished by putting fetters or gyves upon them. 7. Jac. 1.

Posse Comitatus. CAP. 119.

WHere the Just. of P. Sheriffe, or other officer, is enabled to take the power of the County, it seemeth, they may command, & ought to have the aid and attendance of all Knights, Gentlemen, Yeoman, Husbandmen, Labourers, Tradesmen, servants, and apprentices, and of all other such persons, being above the age of 15. years, and that are able to travell. Lamb. 305.

But women, Ecclesiasticall persons, and such as be decrepit or diseased of any continuall infirmie, shall not be compelled to attend them.

And in such cases, it is referred to the discretion of the Justices of Peace (or Sheriffe, &c.) what number they will have to attend upon them, and how and after what manner they shall be armed, weaponed, or otherwise furnished.

But it is not justifiable for the Just. of P. Sheriffe, or other officer, to assemble *Posse Comitatus*, or raise a power or assembly of people (upon their owne heads) without just cause. *Vide antea, tit. Ryots.*

what

What Persons may take Posse Comitatus, and in what Cases.

ANy Justice of peace, or Sherife, may take (of that County where he is a Justice, or Sherife) any number that they shall thinke meet to pursue, apprehend, arrest, & imprison traitors, murderers, robbers, and other felons; or such as doe breake, or goe about to breake, or disturb the Kings peace; and every man (being required) ought to assist and aid them. *Vide antea, tit. Forcible Entry, and Felony.*

The Just. of P. (and the Sheriffe, or Under-sheriffe) may take *Posse Comitatus* for the suppressing of ryots, and all sorts of persons (being able & required) ought to assist them therein. *Vide antea, tit. Ryots.*

14.H.7.3. Yea, any one Justice of peace may take the power & aid of the county, to suppress ryoters, and needs not to tarry for the coming of another Justice, or of the Sheriffe.

Also in cases of forcible Entry, any Justice of peace may take *Posse Comitatus* to remove such persons as by his view, or by inquisition taken before him, shall be found to have made any forcible Entry (into other mens possessions) or to detain them with force. *Vide antea, tit. Forc. Entry.*

P. Recul. 52. Also the Sheriffe, or other officer, upon any lawfull warrant, for the apprehending of any Popish Recusant, &c. may take *Posse Comitatus*, &c. See the statute 3. Jac. cap. 4.

1.H.7.1.10.
Co. 5. 115.
P. Distr. 4.
P. Rector. 5.
Br. Fin. p. 37.
Br. Ryots 1, 3. The Sheriffe, Under-sheriffe, or Bailife, &c. (if need be) may by the Common Law, take the power of the Countie (what number they shall thinke good) to execute the Kings proceffe or Writ, be it a writ of execution, *Replevin*, *Estrement*, *Capias*, or other Writ, it being the Kings commandement. (See also the stat. *west. 1. 17. 17. West. 3. 39.*)

And such as shall not assist them therein (being required) shall pay a fine to the King.

1.H.7.1.
Br. Tres. 146.
Br. Ryots 79 The Sheriff's Bailife, to execute a Replevie, took with him three hundred men armed (*modo guerino, &c.*) with Brigandines, Jacks, and Guns, & it was holden lawfull: for the Sheriffes officer hath power to take assistance, as well as the Sheriffe himselfe, for that all is one office, and one authority.

A man demands the peace in the Chancerie against a great Lord, & hath a *Supplicavit* directed to the Sheriffe: there, if need shall be, the Sheriffe may take *Posse Comitatus* to aid him to arrest such a Lord, &c. *Vide antea, tit. Suretie for the Peace.*

So it seemeth, if a *Supplicavit* be directed to a Just. of peace, the Just. of peace, or the officer to whom the Just. of P. shall make his Warrant in this behalfe, (upon resistance made) may (if need be) take *Posse Comitatus* to aid him to arrest the partie: *Quia quando aliquid mandatur, mandatur & omne per quod pervenitur ad illud. Co. 5. 115.*

But every Sheriffe is inabled besides by his Writ of Assistance, whereby there is commandement (under the great seale) to all Archbishops, Dukes, Earles, Barons, and all other the Kings subjects within the same County, to be aiding to him in whatsoever belongeth to his office, &c.

The Sheriffe may take *Posse Comitatus* to apprehend felons, &c. or disturbers of the peace. *Vide antea, tit. Forcible Entry.*

So

So he may take *Passe Comitatus*, to execute the precept of the Justice of peace, *ibid.*

The Constable (of a towne) upon a felony committed, or upon any affray, or the like, may take the aid of his neighbours, or other persons being present, to apprehend the felons, or to cause the peace to be kept, and to carry the offenders before the Just. &c. See *Br. Riot. 3.* J. H. 7. 10.
41. H. 7. 10.
Br. Tresp.
432.

One hath hurt another, whereby he is in perill of death, the Constable may take power or aid to arrest him, &c. 38. E. 1. 2.

So may the Constable take the aid of his neighbours, for executing of the Justices Warrant directed to him.

Yea all and every such persons as are conservators of the peace by the common Law, (*sc.* every pety constable, high Constable, Coroner, Sheriffe, Steward of a Leet, or of a Court of Pipowders, steward of the Sheriffes Torne, and other Judge in any Court of Record) may command & take the meet helpe, aid, and force of others, to pacifie, and to arrest all such, who in their presence, and within their jurisdiction, shall goe about to breake the peace by deed or word.

Every man may assemble his friends and neyghours to defend his person, &c. (being in his house) against violence, &c. but not to goe abroad with him to a Faire or market, &c. *Vide antea, tit. Forcible Entry.* Co. 113. 1.
21. H. 7. 39.

Certaine Advices to the Justices of Peace. CAP. 120.

I Though it not amisse here shortly to admonish the Justices of peace again, of some few things mentioned before, for their better memory.

1 First, that they exercise not the office of a Justice of peace, before they have taken the Oath of their office, and the oath of Supremacie. *Vide antea, cap. 4.*

2 That they execute not this their office in their owne case, but to cause the offender to bee convented or caried before some other Justice, or to desire the aid of some other Justice being present; *quia iniquum est aliquem sua rei esse Judicem. Cok. 8. 118.* And some late statutes have taken speciall care to prevent this, as you may see *hic tit. Tresp. &c.* Crom. l. 64.
Lk. 113.
Co. l. 141.

Besides, *idem non potest esse Agens & passiens. 14. H. 8. 31.* And when a man is a party, he cannot be a Judge indifferent. *8. H. 6. 19. Auxil ad estre soveni view, que Justice de peace que ad execute serra Office en son Case domesne, ad estre puny pur ceo in Camera stellata. Cromp. 68.*

3 That they be carefull for the execution of the statute of Ryots. *Vide antea, tit. Ryots. Cap. 46.*

If upon their inquirie of a Ryot the truth cannot be found, by reason of any maintenance, &c. that they certifie the same within one moneth. *Ibid.*

4 That upon a forcible Entry, they make no restitution, without Enquirie. *Vide antea, tit. Forcible Entry.*

5 That upon notice of any treason, or of any Seminaries, &c. or of any *Agnus Dei*, &c. offered, they discover the same to some of the privie Counsell. *Vide tit. Treason.*

6 That they bee circumspect in bailing of prisoners, *viz.* that they neither

neither denie it to such as are baileable, nor yeeld it where it is not grantable. *Vide hic Bailement.*

7 If any felony be committed, and one is brought before the Justice of Peace upon suspition for the same, though it shall appeare to the Justice that the prisoner is not guilty of that offence, or that it is not felony of death, yet he may not set him at libertie, but so as he may come to his triall. *Vide antea, iii. Felony by Statute, and Evidence against Felons.*

8 That all Recognisances taken by them, be in the Kings name.

9 That all Recognisances taken by them, be certified at their next quarter Sessions, or gaole delivery, according as the case shall require.

10 That they meet at every Easter Sessions at the least, *vide 5. El. cap. 4. P. Just. 67.* And yet their presence and attendance at every generall Sessions is very requisite.

11 That their examinations taken concerning the misentring of Plaints in County courts; or the defaults of gathering the Shire Amerciaments, be certified into the Exchequer, &c. *Vide antea, iii. Sheriffes.*

12 That such offences as the Surveyours of Highwayes shall present to them, they againe present at their next quarter Sessions. *Vide antea, iii. Highwayes.*

13 That the oathes taken by them upon the submission of any Recusant, be certified at their next quarter Sessions. *Vide antea, iii. Recusants.*

14 Also that they doe justice, and give remedy to every party grieved, in any thing that lieth within their power, to heare, determine, or execute, and that without respect of persons, & according to the lawes and statutes of this Realme: *Vide antea, cap. 4.*

Note, that all these former matters are penall to the Justices of P. if they shall offend in any of them, and therefore it is likely they will be the more carefull therein. But there are certaine other things principally tending to the publike good, & lately commended from his Majestie, (by the Judges of Alsife) to the care of the Justices of peace; in all which the Justices of peace are to imploy also their speciall care and diligence; and they are shortly these ten articles following.

1 Alehouses; the abuses there to be reformed, and such as be unlicenced to be suppressed.

2 Highwayes, and Bridges to be amended.

3 Huy and Cry, and fresh suit to be duly made, & pursued after robbers, and other Felons.

4 Labourers: *sc.* idle persons meet to serve, to bee compelled to goe to service.

5. Poore; their children to be placed Apprentices; such as are able of body, to be holden or set to worke.

6 Recusants; first Popish Recusants (especially such as have beene reconciled to the Pope, or drawne to the Popish Religion, since the Gunpowder Treason, for these are by his Majestie accounted most dangerous) that these be certified into the King Bench, and further to be dealt withall (by the Justices of peace) according to the severall Statutes in that behalfe made.

Also negligent Recusants, which shall not resort every Sunday to Church,

Church, that such bee punished according to the statute; for the first and best meanes to bring men to God, is to bring them to Church.

7 Rogues and Vagabonds, to be duly punished.

8 Houses of correction, to be maintained.

9 Watch to be duely kept.

10 Weights and measures, the abuses therein to be reformed.

Further, the Justices of peace are to bee carefull that they suffer not the King to be disadvantaged, where it lyeth lawfully in their power to prevent it, *vide Lamb.* 521.

Also that they remember, how that they exercise not the judgements of men only, but of God himselfe (whose power they doe participate, & who is alwayes present with them) and therefore must take heed that in all their actions they set God continually before their eyes.

But forasmuch as most of the businesse of the Just. of peace (our of Sessions) consisteth in the execution of divers stat. committed to their charge, which stat. cannot be sufficiently abridged, but that they will come short of the substance & body thereof, therefore it shall be safest for the Justice of peace not to relie overmuch upon these short collections thereof, but to have an eye to the Abridgement of statutes, or rather to the booke of Statutes at large, and thereby to take their further and better directions for their whole proceedings: for (as Sir Edw. Coke observeth) Abridgements are of good and necessary use to serve as Tables, but not to ground any opinion, (much lesse to proceed judicially) upon them: *Ideo*, saith he, *sat is est petere fontes quam sectari rivulos.* *Cok.* 10. 117. b.

And lastly, for the better encouragement of Justices of peace, Constables, and other officers (and of all others which in their aide, or assistance, or by their commandement shall do any thing touching his or their office) who (by causelesse suits commenced by contentious persons against them for executing their offices) have lately beene discouraged from doing their offices (with that courage, care and diligence, which is required at their hands) now for their ease in pleading, they are by the stat. 7. & 21. Jacobi, allowed to plead the generall issue of Not guilty, and to give the speciall matter in evidence, and for their wrongfull vexation double costs. And for all Actions, &c. to be brought against any Justice of peace, or other officer, (or other person which in their aide, &c. shall doe any thing concerning their office) the said Action, &c. shall be layed within the Countie, where the fact shall be done, and not else where, &c. 21. Jac. Reg. cap. 12.

Et nota, quicquid Justic. feceris de Recordo ignoranter, & pro defectu scientia, non eris pro eo punitus, Nec pro re per ipsum facta judicialiter, 2. R. 3. fol. 10. M7. les Justices d' Assise poient oyer, & punier les defaults de Justices de Peace, sc. leur contempts, omisions, negligences, faveurs, affections, corruptions, & autres defaults quacunq.

WARRANTS.

Warrants, and Presidents. CAP. 121.

THe Warrants of the Justices of peace, may be styled & made after divers manners, As

- 1 First, in the name of the King, and yet the *Tesse* may be under the name of the Justice (or Justices) of peace, that grant them out.
- 2 Or they may be stiled and made onely in the names of the Justices.
- 3 Or they may bee made without any such style, and onely under the *Tesse* of the Just. of peace, or onely subscribed by the Just. as followeth.

In the Kings Majesties name.

The Style.

CHARLES by the grace of God, &c. To our Sherife of our *Cantabr.* County of Cambridge, the High Constables of the Hundred of Radfield, the pety Constables of the Towne of Balgham, and to all & singular our Bailifes, and other Ministers in the said Countie, aswell within liberties as without, Greeting. Forasmuch as A. B. of, &c. hath come before Sir *Edward Peyton*, Knight and Baronet, one of our Justices of peace within the said Countie, and hath, &c. (concluding it in the Justices name, as thus) Witnesse the said *Edward Peyton*, at Illeham, the day of &c.

The Telle.

Note, that wheresoever the Warrant is made in the Kings name, (as before) there it seemeth the Warrant ought to be directed to all Ministers, as well within liberties as without, for that the King is made a partie: and so it may bee done in all other warrants (especially for felony, or for the peace, or the good behaviour, &c.) because it is the service of the King, and no libertie or franchise shall bee allowed; or hold place against the King. *Br. Franch.* 31. Yet see before, that the Justices of peace of the Countie may not intermeddle in any City, Towne, or libertie, which have their proper Justices. *Hic cap.* 6.

Or thus, in the name of the Justice himselfe.

Myles Sandys, Knight and Baronet, one of the Justices of the peace, *Cantabr.* of our Sovereigne Lord the King, within the said Countie; To the Sherife of the said Countie, to the Bailife, or Constables of the Hundred of, &c. to the pety Constables of the Towne of F. within the said Hundred, and to all other the faithfull Ministers and Officers of our Sovereigne Lord within the said Countie, and to every of them, Greeting. Forasmuch as, &c. Given under my hand and Seale, at the day of &c.

Or they may be directed to any of these Officers (above named) particularly, or else to any other indifferent person, or persons, as followeth.

Christopherus Hatton, miles & Baronettus, unus Custodū pacis Dom. Regis in Com. Cantabr. Vic. ejusdem, salutem. Vel ballivo itineranti ejusdem Com. salutem: vel ballivo Hundred' de E. & Ch. in Com. præd' salutem: vel B. C. & D. E. constabul' Hundred' de W. salutem: vel Constab. (generally) Hundred', or ville de H. salutem: vel F. G. & H. I. Constabul. ville de H. & eorum

et una cujusslibet salutem: vel sic, Dilectis sibi K.L. & M.N. & eorum cuilibet conjunctim & divisim salutem, &c.

A Warrant for the Peace.

Centabr.

CHARLES by the grace of God, &c. to our Sherife, &c. For as much as A. B. of, &c. Yeoman, hath personally come before Sir John Carleton Barronet, one of our Justices of the peace within the said county, and hath taken a Corporall oath, that he is affraid that one C. D. of in the said County, Yeoman, will * beat (wound, Any one of these cases is sufficient. maim, or kill him, or burne his houses;) and hath therewithall prayed Suretie of the peace against the said C. D. therefore wee command and charge you jointly and severally, that (immediately upon the receit hereof) you cause the said C. D. to come before the said Sir John Carleton, or some other of our Justices of the same county, to find sufficient suretie and mainprife, as well for his appearance at the next Quarter Sessions of our peace to be holden at the Castle of Cambridge, or elsewhere, for, or in the said County; as also for our peace to be kept towards us, & all our liege people, and chiefly towards the said A. B. that is to say, that he the said C. D. shall not doe, nor by any meanes procure or cause to be done, any of the said evils, to any of our said people, and especially to the said A. B. And if the said C. D. shall refuse thus to doe, that then immediately (without expecting of any further warrant) you him safely convey, or cause him to bee conveyed safely to our next prison in the said County, there to remaine untill he shall willingly doe the same: (so that hee may be before our said Justices, at the said next generall Sessions of the peace to be holden at Cambridge aforesaid, then and there to answer unto us for his contempt in this behalfe.) And see that you certifie your doings in the Premisses to our said Justices at the said Sessions, bringing then thither this precept with you. Witnesse the said John Carleton, at aforesaid, the fourth day of August, &c.

Or thus, in the name of the Justice himselfe, Mutatis, mutandis.

Centabr.

OLiver Cromwell, Knight, one of the Justices of the peace of our Sovereigne Lord the King, within the said County, to the sherife &c. Greeting. Forasmuch as A. B. &c. hath personally come before me, and hath taken a Corporall Oath, &c. *ut supra*. These shall be therefore on the behalfe, and in the name of our said Sovereigne Lord, to command you jointly, &c. that you cause the said C. to come before mee, or some other of his Majesties said Justices of Peace, in the said County, &c. *ut supra*. Given under my seale at aforesaid, &c.

Or thus.

OLiv. Cromwell, Miles unus Custod' pacis Dom. Regis in Com' Cant. Vicecom', &c. salutem, Quia A. B. coram me sacrament' prestitit Corporale, Quod ipse metuis sibi dampnum de corpore suo per I. S. de facile posse venire: Or thus: Quod ipse de visa sua, &c. per I. S. graviter, & manifeste comminas' existis, &c.

Or

Or thus: *Quod ipse metuui de vita sua, (sive de mutilatione membrorum suorum; sive de incendiis domorum suarum) per Jo. S. &c. Ideo ex parte dom' Regis vobis & cuilibet vestrum mando, Quod attachias prae'd' I.S. (per corpus suum) Ita quod eum iam citius quam capius fueris personaliter ducatis coram me vel uno sociorum meorum custod' pacis Domini Regis ad inveniend' sufficienti securitati de pace gerend' erga Dominum Regem, & cunctum populum suum, & praecipue erga prae'd' A.B. viz. quod ipse dampnum vel malum aliquod prae'd' A.B. aut alicui alio de populo domini Regis de corporibus suis, mutilatione membrorum suorum, necnon de incendio domorum suarum non faciat, nec fieri procurat. In quovismodo: & si hoc coram te recusaveris, tunc ipsum I.S. usque ad prox. gaolam domini Regis infra dict' Com' duci fac' ipsum ibidem sub arcta custod' moratur' usq; ad proximam Sessionem ipsius domini Regis de pace in Com' prae'd' tenendam: & hoc nullatenus omittas sub poena incubendi & in ipse sis ibidem, & habeas hoc mandatum. Dai apud &c.*

Or thus.

I.C. miles, unus Just' domini Regis de pace in Com' Cantabr' conservand' assign' vic' &c. saluem, Ex parte dom' Regis vobis & cuilibet vestrum mando, quod attachias seu unus vestrum attachias I.S. de, &c. Ita quod habeatis seu unus vestrum habeat corpus ejus coram me, vel uno sociorum meorum, &c. ad inveniendam sufficientem securitatem pacis, quod ipse non fac' nec fieri procurabit quovismodo aliquod dampnum corporale alicui de populo domini Regis, nec de incendio domorum suarum, & praecipue erga A.B. qui de vita & mutilatione membrorum suorum, necnon de incendio domorum suarum per prae'd' I.S. graviter & manifeste cominai' existit prout mihi sacrar' prestitit corporal' & si hoc recusaveris, tunc eum gaolam domini Regis de Com' prae'd' duci facias seu unus vestrum duci facias ibidem moratur' quousque hoc gravis facere voluerit. Et qualiter hoc mandatum fuerit executum mihi & sociis meis (custodes pacis Com' prae'd') ad proximam sessionem pacis in Com' prae'd' tenend' certifies, & habeas ibid' tunc hoc praeceptum. Sigillo meo sigillas datum, &c.

Alias.

A.B. unus Justic' &c. ex parte domini Regis tibi mando, quod non omittas propter aliquam libertatem Com' prae'd' quin attachias I.S. de, &c. & eum salvo custodire fac' ita quod habeas corpus ejus ad proximam sessionem pacis in Com' prae'd' tenend' ad inveniend' tunc & ibidem sufficientem securitatem de pace erga dictum dominum Regem & cunctam populum suum, & praecipue erga N.S. &c. ut antea.

Another for the Peace.

To the Constables of, &c. and to either of them.

FOrasmuch as B.A. the wife of W.A. of your said town, laborer, hath required surety of the peace against T.B. of your said towne, Butcher, and withall hath taken her corporall oath before me, that she required the same not for any private malice, hatred, or evil will, but simply that she is affraid of her life, (or the hurting or maiming of her body, or the burning of her houses;) these are therefore to will and require you, and in his Majesties name to charge and command you, that immediately

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upon

upon the sight hereof, you, or one of you, * require the said T.B. to come before me, or some other of the Kings Majesties Justices within the said countie, to find sufficient sureties, as well for his appearance at the next generall Quarter Sessions of the peace to be holden for this Countie, as also that the said T.B. shall in the meane time keep the Kings Majesties peace, as well towards his said Majestie, as towards all his liege people, and especially towards the said B.A. And if he shall refuse so to doe, that then immediately you doe convey the said T.B. or cause him to be conveyed unto the Kings Majesties gaole at the Castle of Cambridge, there to remain untill he shall willingly doe the same. And see that you certifie your doings in the premisses to the Just. at the said Sessions, and have you there this Warrant. Dated at, &c.

* See before
tit. Arrest.

Or thus.

FOrasmuch as B. the wife of W.A. of your said town, hath personally come before me (I.C. Knight, one of the Kings Majesties Justices of the P. for the said Countie of C.) and hath taken her corporall oath, That one T.B. of your said towne hath already assaulted, beaten, and bruised her the said B. and further hath threatned her in such sort, that she is afraid that the said T.B. will beat, wound, maim, or kill her, or do her some other bodily harme; and thereupon she the said B. hath prayed security of the P. to be had or granted her, against the said T.B. These are therefore to will and require you (&c. *ut supra*) to finde sufficient sureties (or to bee bound with two sufficient sureties) for his personall appearance at the next generall quarter Sessions of the peace to be holden for this Countie, then and there to answer the premisses, and in the meane time that he the said T.B. keepe the peace towards our said Sovereigne Lord the King, and all his liege people, and especially against the said B. And if he shall refuse thus to doe, that then, (&c. *ut supra*.)

A Warrant for the Peace upon a Supplicavit.

Cambr.

Chrisstopher Hatton Knight, one of the Justices of the P. of our Sovereigne Lord the Kings Majestie within the Countie of Cambridge, to the Sheriffe of the said Countie, the High Constables of the Hundred of R. the petie Constables of the towne of B. and to all and singular the Kings Majesties Bailiffes, and other Ministers, as well within Liberties as without in the said Countie, and to every of them, Greeting. Know ye, that I have received the Commandement (or Writ) of our said Sovereigne Lord (in these words, (reciting the whole writ of *Supplicavit*: or only reciting the effect of the *Supplicavit*) thus, to compell A.B. of, &c. to finde sufficient suretie for his Majesties peace, by him to be kept, towards, &c.) And therefore on the behalfe of our said Sovereigne Lord I command and charge you, joyntly and severally, that immediately upon the receipt hereof, you cause the said A. B. to come before me at my house in Chevely; to finde sufficient suretie and mainprise for the peace, to bee kept towards our said Sovereigne Lord, and all his liege people, and especially towards the said C.D. and if the said A.B. shall refuse thus to doe, that then you him safely convey, or cause to be safely conveyed, to his Majesties gaole at the Castle of Cambridge (or to the next gaole of his Majestie in

in the said Countie) there to remaine untill that he shall willingly doe the same; so that he may be before the Just. of the P. of our said Sovereign L. within the said countie, at the next generall Sessions of the peace to be holden for the said Countie, there to answer to our said Sovereigne Lord for his contempt in this behalfe. And see that you certifie your doings in the premisses, to the said Justices at the said sessions, bringing then thither this precept with you. Ycovenat afore said, under my hand and seale, the fourth day of, &c.*

The Returne of this Writ, and Certificat of the Justices doings herein: see here before in the title of *Surety for the Peace, cap. 73.*

A warrant for the good behaviour.

*Any one of these is sufficient, or any other like cause whereof the hic cap. 75.

FOrasmuch as A. B. of your said towne is not of good name or fame, *cause.* nor of honest conversation (but *an evill doer, a Rioter, Barretter, and perturber of the peace of our said sovereign Lord) as we are given to understand by the complaint of sundrie credible persons. Therefore on the behalfe of our said Sovereigne Lord we command you; and every of you, that immediately, &c. you cause the said A. B. to come before us, or some other of our fellow Justices, to find sufficient suretie and mainprise, as well for his good abearing towards our said Sovereigne Lord and all his liege people, untill the next quarter sessions of the peace to be holden in the said County, as also for his appearance then and there. And if he shall refuse so to doe, that then, &c. (as in the warrant for the peace.)

Or ibi.

FOrasmuch as we have beene credibly informed that S. W. of your *cause.* Towne, &c. is a man of evill behaviour, one that daily moveth discord, strife, and dissention among his neighbors, and a common perturber of his Majesties peace: These are therefore in the Kings Majesties name to command you, &c.

Another warrant for the good behaviour.

Johannes Peyton Miles, & Johannes Cutts Miles, *Justiciarii Domini caus.* Regis nunc ad pacem in Comitatu praed' conservand' assignat', vic' Com' praed', Necnon omnibus & singulis Ballivis, Constabular', ceterisque dicti Domini Regis ministris, tam infra libertates quam extra, in eodem Com' salutem. Quia dai' est nobis intelligi per relationem & Testimonium multorum fide dignorum Com' praedicti quod A. B. de C. in Com' praedicti gener', & R. A. de eodem Teoman, * non sunt bonor' nominis & fame, nec conversationis honesta, sed male dispositionis, barraiores, & pacis dicti Domini Regis perturbatores, ita quod verisimilis sit murdrum, homicidium, lites, discordias, & alia gravamina, & damna inter legios dicti dom' Regis, de corporibus suis, praeextu praemissorum indies oriri: Ideo ex parte dicti Dom' regis vobis & cuilibet vestrum praecipimus, quod non omni' propter aliquam libertatem in Com' praedicti quin attachiat', seu unus vestrum attachiat' praefatos A. B. & R. A. Ita qd' habeat' eos coram nobis seu aliis sociorum nostrorum Justiciari' dicti Domini Regis ad pacem, &c. quam cito capipossunt (vel coram Justiciari' dicti Dom' Regis ad pacem in com' praed' conservand', ad proximam

H b 2

generalem

* Sunt male fame & mali rebus, is sufficient. l. b. lxx. 38.

generalem sessionem pacis in eodem com' tenend' ad inveniend' tunc coram nobis (vel dictis Justiciariis) sufficiens securitas de se bene gerend' erga dict' Dom' Regem, & cunctum populum suum, juxta formam statuti inde editi & promissi sub certa pena eis per nos (vel per prefat' Justiciari') tunc imponend', Et hoc nullatenus omittatis periculo incumbente. Et habeas coram nobis, vel dictis Justiciari' apud Sessiones predictas hoc Præceptum. Testibus nobis prædictis I. P. & I. C. ultimo die Junii, anno regni domini nostri Caroli Dei grat' Anglia, &c.

A generall warrant for misdemeanor.

Cantabr.

John Cutts Knight, one of the Justices, &c. to the Constables of, &c. and to either of them, These are to will and require you, and in his Majesties name straitly to charge and command you, and either of you, that immediately upon the sight hereof (or upon Munday next by eight of the clock in the forenoone) you bring I. H. of your said town, Butcher, before me, to answer to such matters of misdemeanor as on his Majesties behalfe shall be objected against him. And hereof faile you not at your perill. Dated at Childerley, &c.

Another for misdemeanor.

Cantabr.

These are to will and require you, &c. That immediately upon the sight or receipt hereof, you attach the bodies of A. B. and C. D. &c. (or of all & every the persons hereunder named) and to bring them forthwith before me, to answer unto such matters of misdemeanor as on his Majesties behalfe shall be objected against them. And hereof faile you not at your perils. Dated, &c.

To attach one for felonie.

Cantabr.

Forasmuch as complaint hath bin made unto me by C. D. that of late he hath had certaine goods feloniously taken from him, and that hee hath in suspition one R. G. of your said town: These are therefore to will and require you, &c. presently upon the receipt hereof, to attach the body of the said R. G. and thereupon to bring him before me to answer to the premisses. And hereof faile you not at your perils. Dated, &c.

Another.

Cantabr.

These are to will and require you, &c. presently upon the receipt hereof, to attach the body of A. B. and to bring him before me, to answer unto such matters of suspition of felony as on his Majesties behalfe shall be objected against him. And hereof faile you not at your perils. Dated, &c.

Another.

These are to will and require you, &c. to attach, &c. to answer unto the felonious taking of certain goods, wherewith he is charged by I. S. And thereof faile you not, &c.

Another.

Johan. Millicent Miles, unum Just' &c. Const' vil' de B. & W. & cor' cuilibet conjunctim & divis. salui. Ex parte Dom' Reg' vobis & cuilibet vestrum mando, quod attachiatis per corpus, seu unum vestrum attachiat I. H. de

de W. hosteler suspecti sive defamai' de felon', ita qd' eū habeat' seu unū vestr' coram me habeat die Lune prox. fuuro. sub periculo incumbeme. Dat. &c.
Another.

Richardus St-George Miles, unū cust' pacis, &c. Ballivo Hundred de R. in Com' præd' salutem. Ex parte dicti domini Regis tibi mando qd' attach' N. B. de D. in com' præd' laborer. gravier suspecti de felon' per ipsum facti (ut dicitur) & eum proxim' gaole dicti dom' Regis adq; aliqua manucapi' committas, ibid' moras quousq; secundum legem Regni Anglia deliberetur. Et hoc non omittas periculo incumbeme. Datum, &c.

To search for stolne goods.

WHereas complaint hath been made unto me, by N.O. that of late he hath had feloniously taken from him certaine goods, and that he hath in suspition divers lewd and evill disposed persons within your Parish, these are to will, &c. that immediately upon the receit hereof you make diligent search in all and every such suspected houses, and places within your Parish, as you and this complainant shall thinke convenient; and if upon your said search you find any of the said goods, or other just cause of suspition, that then you bring all such suspected persons as you shall so find, before me, to answer unto the premisses. And hereof faile you not, &c.

Another.

WHereas complaint hath been made unto me Robert Hutton *cantab.* Knight, one of his Majesties Just. &c. by I. S. of, &c. that upon Munday at night last he had feloniously taken from him certain goods, [they would be named] and that he is given to understand, that there be divers parcels of such goods in the hands or houses of certain suspected persons within your town, These are to will, &c. that you be aiding to, and assist the said I. S. (the bearer hereof) with your best endeavours, whereby he may the better come to the sight and view of the same goods, that so he may the better judge or know whether the said goods, or any part of them, are his; and if he shall finde the same goods, or any of them, that were stolen from him, or that he shall challenge or claime any of the said goods in the possession of any of the said suspected persons, that then you do presently attach the bodies of all such suspected persons within whose custodie, house, or possession, you or he the said I. S. shall so finde the same, and them (together with the said goods) forthwith to bring before me, or some other of his Majesties Justices of peace for this Countie, to make answer thereto. And hereof faile you not, &c. Dated. &c.

To bind men to give in Evidence.

THese are in the Kings Majesties name to charge and command you, *cantab.* &c. That presently upon the sight hereof, you, or some of you, do cause to come before me (or some other of his Majesties Just. of p. of this Countie) the persons hereunder named, to the end that they, and every of them may be bound to make their personal appearance at the next generall gaole deliverie (or Quarter Sessions) to be holden for this county, then and there to testifie their and every of their knowledges, concerning certain felonious acts committed by one A. B. now a prisoner in the Castle of C. &c. And hereof faile you not, &c.

A Warrant for a search after a Robberie committed,
directed to the High Constables.

WHereas there have beene many Robberies lately committed about, &c. Now for the better finding out of the same lewd persons, we whose names are hereunder written, being his Majesties Justices of peace (for the Countie of Cambridge) have thought good, and doe hereby will and require you in his Majesties name, That forthwith you direct your Precepts to every petie Constable within your (severall) Hundreds (commanding them) to make search in all Innes, Ale-houses, and other suspected houses within your precincts, for all such persons as are masterlesse, or out of service; as also for all idle, vagrant, or wandring Rogues, beggers, or other persons; and further, that they the said petie Constables within their precincts, doe take examination and account of all those, and such other persons, as be common Alehouse-haunters, or which expend their mony in riot, or which doe not labour for their living, and have not whereon so to maintaine them: And that the same searches be holden all over in your Hundreds in one night, and at such other severall times as to your discretion shall seem meet: and if any such persons shalbe found in the same searches, and that upon your or the petie Constables examination taken of them, or any of them, there shall be found any cause of suspicion in them, or any of them, that then they bring the same persons so suspected before us, or some one of us, or some other of his Majesties Ju. of the P. of this Countie, to be further examined in the said causes, and to be further dealt withall according to law and justice. And for the better doing hereof, we require you to command in his Majesties name, That every petie Constable within their precinct doe require (and charge) two chiefe discreet Headboroughs in every Parish, to assist them the petie Constables in this service. And hereof faile you not, &c.

A Huy and Cry after Robbers, &c.

To all Constables, and other his Majesties officers, as well within the Countie of Cambridge, as elsewhere within the Realme of England.

WHereas complaint hath bin made unto me Vicechan. of the Univerfity of Cambridge, one of his Majesties Just. of p. within the said Countie of Cambr. by I. S. of, &c. Husband-man, That upon Tuesday at night last (being the day of this instant November) he was robbed of certain linnen taken out of his house, with some * other things, and that he hath manifest cause of suspicion of one A. B. a lewd rogue, (here describe his personage and apparell.) These are in his Majesties name to require you, and every of you, to make search within your severall precincts for the said A. B. and also to make huy and cry after him from town to town, and from county to county, and that as well by horsemen as footmen. And if you shall find him the said A. B. that then you carry him before some one of his Majesties Just. of P. within the county where he shall be taken, by him to be dealt withall according to law, &c.

* They would be named.

A Warrant for one who hath dangerously hurt another.

FOrasmuch as I am credibly informed that I.B. of your town, Blacksmith, hath now lately dangerously hurt one T.G. of your said town Husbandman, by a blow which he hath given the said T. on the face, and another on the back, so as the said T. is in danger of death thereby: These are therefore in the Kings Majesties name straitly to charge & command you, that immediately upon the sight hereof, you, or one of you, doe bring the said I.B. before me, or some other of his Majesties Justices of the peace of this County, to find sufficient sureties, as well for his appearance before the Kings Majesties Justices, at the next generall gaole deliverie to be holden for this County, then and there to answer unto the premisses, and to doe and receive therefore that which by the Court shall be enjoined him: As also that he the said I.B. shall in the mean time keep the Kings Majesties peace towards his said Majestie, and all his liege people, & especially towards the said T.G. And hereof faile you not at your perils. Dated, &c.

For the reputed father of a Bastard childe.

WHereas complaint hath been made unto me H.B. Serjeant at Law, one of his Majesties Just. &c. by K.I. of your said town single woman, that she is (gotten) with child by one T.S. also of your said town Butcher: These are therefore to will and require you, and in his Majesties name to charge and command you, and either of you, that presently upon the receipt hereof, you attach the body of the said T.S. and thereupon to bring him before me, (or some other of his Majesties Just. of the P. for this county) to find sufficient sureties, as well for his appearance at the next generall sessions of the peace to be holden for this County, as also for his good behaviour towards his Majestie, and all his liege people in the meane time. And hereof faile you not, as you will answer the contrary at your perils. Dated, &c.

An Order for a Bastard childe.

The Order of Sir I.M. Knight, and M.D. Esquire, two of his Majesties Justices of peace of the County of C. made for the reliefe of the Parish of W. in the said County, for the keeping of B. a bastard child begotten by T.S. of, &c. on the body of K.I. &c.

Inprimis, upon the examination of the said K. duely by us taken, we doe find that the said T.S. is charged to have had (divers times) bodily and carnall knowledge of her (betweene such times) and to be the only father of the said bastard childe, &c. and therefore we doe order and adjudge him to be the reputed father of the said childe.

We doe further order as followeth: First, that the said K. shall keep her said childe untill it come to 8. years of age.

Secondly, that the said T.S. upon notice of this our Order, shall, after such notice, pay into the hands of one of the Overseers of the poore of W. (for the time being) after the rate of 00 every week, to be paid monthly every year, towards the reliefe of the said child, untill it comes to 8. years of age.

Thirdly, that after the said child shall come to 8. &c. that the said T.S. pay to the Overseers, &c. 5*li.* towards the putting out of the same childe to be an Apprentice, &c.

Fourthly,

Fourthly, that the said T. S. presently give good securitie to one of the Overseers, &c. to performe this our Order.

Where a Mayd servant is gotten with child, and from thence sent to her place of birth.

FOrasmuch as I. M. for the space of yeares now last past, hath dwelt in the Parish of W. (in the countie of E.) and being there settled in service with of W. aforesaid, was gotten with child; and being so with child, is now sent or conveyed to your town of B. under colour that she was there born, to the burthening of your said town, and contrary to law: These are in his Majesties name to charge and command you safely to convey the said I. to W. aforesaid, there to be set on worke, or otherwise to be provided for according to the law; and that you deliver and leave, or offer to leave the said I. to and with some one of the Churchwardens or Overseers for the poore of the parish of W. aforesaid. And hereof faile you not, &c.

Note that such maid servant cannot be sent from the place where she is (or last was) in service, to the place of her birth, but must set her selfe to labour where she last dwelt, or served, being able of body: or being impotent, she is to be relieved by the Town where she last dwelt, or served. See *hic antea, tit. Poore.*

A Warrant for Overseers to give up their Account.

To the High Constables of the Hundred of, &c.

Cantabr.

THese are in the Kings Majesties name to charge and command you forthwith to give warning to the Churchwardens, and other the Overseers of the poore of every parish within your Hundred, that they doe personally appeare before us at Newmarket, at the signe of the Greyhound there, upon Tuesday the of next comming, by nine of the clock in the forenoone of the same day, to yeeld up, and to make a true and perfect account in writing, subscribed with their names or marks, of all such sums of money as they have received, or rated and cessed and not received, for and towards the reliefe of the poore of their severall Parishes, and also of such stock (to set their poore on worke) as is in their hands, or in the hands of any their said poore to worke, and of all * other things concerning their said office; and hereof that they faile not at their and every of their perils. And further we require you, that you give warning to the petie Constables of every towne within your said hundred, that they or one of them be also then and there present before us, to inform and certifie us of the names of such other persons as are meet and fitting to be Overseers of the poore within their severall Towns, for this yeer next ensuing. And hereof faile you not, &c.

* See what they be in the title Poore.

And this warrant must be under the hands and scales of two Justices at the least, the one of the *Quorum: Vide tit. Poore.*

A Warrant to new Overseers to take their charge.

By vertue of the statute made in the three and fortieth yeare of the Reigne of our late Sovereigne Lady Queene Elizabeth, (intituled, An Act

And for the reliefe of the poore) These are to will and require you, whose names are hereunder written, that you, together with the Churchwardens of your Parish for the time being, doe (according to the same stat.) take order from time to time, for this yeare to come, for the setting to work of the Poore within your Parish, and for the raising of a convenient stocke of some Ware, or Stuffle, in your town, to that purpose; and for the providing of necessarie reliefe for such as be lame and impotent amongst you; and for the placing, as Apprentices, such children whose parents are not able to maintaine them. And hereof see that you faile not at your perils. Dated under the hands and seales of us *Sam. Collins* and *Thomas Comber*, Doctors of Divinity, and two of his Majesties Justices of the peace within the sayd County of Cambridge.

This warrant must be under the hands and seales of two Justices. *Vide antea, sit. Poore.*

A Warrant to distraine such as refuse to pay their Rates for the Poore.

To the Churchwardens, and other the Overseers for the Poore within the Parish of W.
and to every of them.

FOrasmuch as we are credibly informed, that the persons hereunder ^{*Cap. 121.*} named, doe refuse to contribute or pay the summes of money hereunder mentioned, (upon their heads) being assessed and rated upon them severally, for and towards the necessarie reliefe of the poore of your said towne, according to the forme of the stat. in that behalfe lately provided: These are therefore in his Majesties name to charge and command you, and every of you, forthwith to levie all and every the said severall summes of mony unpaid, and all the arrerages thereof, of all and every the said persons so refusing, by distresse and sale of the offenders goods, you rendring to the parties the overplus that shall remain upon the sale of the said goods; And this shalbe your sufficient warrant therein. Dated, &c. *Vide antea, sit. Poore.*

Another.

To the Churchwardens, &c.

THese are in his Majesties name to charge and command you and every of you, presently to demand of all and every the persons hereunder named, all and every the severall sums of mony hereunder severally written, or set upon their heads, being assessed and rated upon them for and towards the necessary reliefe of the poore of your said town, according to the form of the statute in that behalfe lately provided: And if they or any of them shall refuse to pay the said severall sums of mony so rated upon them, That then presently you levie the same by distresse and sale of the offenders goods, rendring to the parties the overplus that shall remain upon the sale of their said goods. And this shall be your sufficient warrant therein. Dated, &c. ^{*Cap. 121.*}

These two last warrants must also be under the hands and seales of two Justices, &c.

A Warrant for a generall search for Rogues.

To the High-Constable of the Hundred of, &c.

Canabr.

THese are in the Kings Majesties name to charge and command you, that you, together with the petie Constables of the severall towns, parishes, and hamlets within your Hundred, (taking sufficient assistance out of the said townes) doe make a generall privie search within every of the said severall towns, parishes and hamlets upon at night next comming, for the finding out and apprehending of all Rogues, Vagabonds, and wandring and idle persons, in or about your said severall towns, parishes, or hamlets; and that such as shall be found and apprehended, you doe cause them to be brought before us the next day unto L. by nine of the clock, there to be by us * dealt withall according to the late statute in that behalfe provided. At which time and place we further require you, together with the said petie Constables, to appeare before us, and there to give an account and reckoning upon oath, in writing, and under the hands of the Minister of every severall parish within your Hundred, what Rogues, Vagabonds, wandring and disordered persons have beene there apprehended as well in the same search, as also since the last assembly and meeting that was made for this purpose, being upon or about the day of last past. And hereof faile you not, &c.

*What the
Just. shall do
with them,
see infra.

Note, that all Rogues which shall be brought before the Just. upon such search (after examination of their idle life, taken by the Just.) are either to be whipped by the Constables of the Town, where the Just. sit (as it seemeth:) or else from thence are to be sent to the house of correction, and to be conveyed thither by the Constables that brought them, and yet at the charge of the Hundred; which services imposed upon the Constables, are some cause of their neglect of this service; and therefore I have set downe another course and president perhaps no lesse serviceable, which also may be performed and done every moneth, or every meeting of the Just. if need shall so require: or if the Just. cannot, or shall not meet, yet, it seemeth, such warrant may be granted out by any one Justice of peace as followeth.

See the title
of Rogues.

Canabr.

These are in the Kings Majesties name to charge and command you, that you, together with the petie Constables of the severall towns, parishes, and hamlets within your hundred (taking sufficient assistance out of the said townes) doe make a generall privie search within every of the said severall towns, parishes, and hamlets, upon at night next comming, for the finding out, and apprehending of all Rogues, Vagabonds, and wandring and idle persons, in or about your said severall towns, and that such as shall be found and apprehended, you doe cause them to be punished in every severall town or parish where they shalbe so apprehended by the petie Constables of every severall parish respectively; and by them also further to be conveyed according to the statute. And if any of the said rogues shall appeare to bee dangerous or incorrigible, that then you cause such to bee brought before me, or any other of his Majesties Justices of peace, of this division, to be further dealt withall according to the statute in such cases provided. Dated, &c,

Afterwards

Afterwards any one of these Justices may take the examination of, or proove against such dangerous rogue, and finding cause, may then joyn with any other Justice of peace of that limit, being of the *Quorum*, and commit such rogue to the house of correction, or gaole, although the said two Justices shall not meet together about it.

39. El. 3.
Jac. 7.
P. Vag. 4.

A Warrant for a fugitive servant.

Henricus Smith *sacra theologia Doctor, unus Just' Dom' Regis, &c. Cantabr.*
Ballivis Hundred' de B. & T. H. Constab' de M. in com' prae' salui'
Quia E. L. reventur in servic' I. T. de M. prae' sibi serviend' (secun-
dum formam & esse' statuti de servientibus editi') a servitio prae' I. T. sine
causa rationabili, & licent' ipsius I. T. recessu (ut dicitur) Ideo ex parte dom'
regis vobis & cuilibet vestrum praecipio, qd' praef. E. L. ad praefat' I. T. magi-
strum suum de serviend' deliberat' faciat, Et si hoc recusaver' tunc eum gaole
Castri Cantabr' duci faciat' quousque, &c. Ita quod eum habeat' coram me,
& sociis meis, Justic' dicti domini Regis in Com' prae' ad prox' session' pacis
ibid' tenend' ad faciend' & recipiend' ea quae ei tunc & ibid' in hac parte ob-
jiciuntur. Sigill. meo sigillato. Dat. apud

West. 373.

Another for the same, and to have the offender
at the next Sessions.

Thomas Bambridge *sacra theologia Doctor, unus Just, &c. vic' com'*
prae', Necnon I. B. Constabular' ville de B. & R. N. ballivo itiner' in
eodem Com' & eorum cuilibet salui'. Ex parte dicti dom' Reg' vobis &
cuilibet vestr' mando, qd' attach' seu unus vestr' attach' W. R. de B. prae' La-
borer, ita qd' eum habeatis seu unus vestrum habeat, coram me & sociis meis
Justic' dicti domini Regis ad pacem in Com' prae' conservand', Necnon, &c.
assign' ad proxim' generalem Sessionem pacis in Com' prae' tenend', ad re-
spondend' iam dicto dom' Regi, quam R. C. de, &c. Ycoman, quare in servi-
tio ipsius R. apud T. in Com' prae' nuper reventur, ab eodem servitio ante finem
termini inter eos concordat' sine causa rationabili & licent' ipsius R. recessu,
in dicti domini Regis nunc contemptum, & ipsius R. grave dampn', & contra
formam statuti inde nuper editi & provis. Et habeatis, seu unus vestrum habe-
at, ibi tunc hoc praecipium. Teste, &c.

Crom. 338.

Cantabr.

Another for a fugitive servant.

TO the Sheriffe of, &c. Whereas I. E. being lawfully retained in ser-vice with N. A. of, &c. is departed from his said masters service be-fore the end of his terme, without his masters leave or licence, (or without any reasonable cause) contrary to the lawes and statutes of this Realme in that behalfe provided: These are therefore in his Majesties name to command you, and every of you, that you, or some one of you, do attach the body of the said I. E. * and to bring him before me (or some o-ther of his Majesties Justices of peace, &c.) to find sufficient sureties, well and faithfully to serve his said master, according to the covenant betweene them

them made: and if he shall refuse thus to doe, that then you cause him to be conveyed safely to the kings Majesties gaole, &c. (as before in a warrant for the peace.) Given under the hand of me *Thomas wilson* Doctor of Divinity, and one of his Majesties Justices of peace within the said County.

* Or thus: That the said I. E. to his said Master to serve againe you doe cause to be delivered: and if that to doe he shall refuse, that then you cause him to be conveyed to the Gaole, &c.

A warrant for one refusing to serve.

Cambr.

Michael Dalton *Armig' unus magistr' Cur' Cancellar' & unus Just'*, *Eccl. R. L. Ballivo de S. in Com' prae'd' salu' Ex parte dicti Dom' reg'*, *tibi mando quod attachias R. A de S. prae'd' Laborer, Ita quod eum habeas coram me vel sociis meis Just. dicti Dom' Regis ad pacem in com' prae'd' conservand', (Necnon ad diversa felonias, transgr' & alia malefacta in eodem com' audiend' & term' assign')* ad prox' general' sess. pacis in com' prae'd' tenend', ad respond' tam dicto dom' regi, quam B. C. de A. & c. Yeoman, quare ipse prae'd' R. A. licet in servitio congruo pro statu suo, per prae'd' B. C. fuit sepim requisit' ei servire, ipsu tamen B. C. servire pœnitius recus. in contemp' dicti dom' regis & ipsius B. C. grave dampnum & contra formam statuti. de servi-entibus nuper editi & provis. Et habeas ibi tunc hoc mandai. Teste, & c.

And yet see the statute 5. El. cap. 4. whereby the departure of a servant, and refusing to serve, &c. are referred to two Justices of peace, by them to be first examined, and then the offenders to be committed, if they be faulty therein. See *antea, tit. Labourers, and Warrants.*

For Alehouse-keepers to Renew their recog.

John St. George Esquire, one of the Kings Majesties Justices, &c.

These are in the Kings Majesties name to require you, That you direct your precepts to everie petie Constable within your Hundred, requiring them that they warn all Alehouse-keepers and Victuallers in their severall towns within your said hundred, to be, and personally to appear before us at Lynton, upon Thursday, &c. then and thither bringing with them their former Licences: And further, that every of them bring with them a Certificate of their fitnessse and honest behaviour in keeping of their Alehouses and Victualling houses, under the hands of foure at the least, of the most substantiall, honest, and discreet inhabitants of the parishes where they so keepe or dwell. And hereof faile you not, &c.

A Warrant for the suppressing of an Alehouse.

TAlbot Pepis and Isaac Barrow Esquires, two of the Kings Majesties Justices of Peace within the said Countie of Cambridge, to the Constables of B. and to either of them greeting. Whereas we are credibly informed that R. D. of your towne, victualler, is himselfe a man of evill behaviour, and besides, doth suffer evill rule and disorder to bee kept in his house, contrary to the Lawes and Statutes of this Realme: These are therefore in his Majesties name to will and command you forthwith to repaire to the house of the said R. D. and to charge

charge him to surcease from keeping any longer any Alehouse or tipling house, and from common selling of Ale or Beere, at his perill: and withall that you cause his signe to be pulled down; hereof faile you not, as you and either of you will answer to the contrary at your perill. Given under our hands and seales at B. the day of and in the yeare of our most gracious Sovereigne Lord Charles, &c.

A Warrant to levie money forfeited by Alehouse hauniers.

John Gill Esquire, one of the Kings Majesties Justices of the P. within the said countie of Camb. to the Constables and Churchwardens of the Parish of W. and to every of them, greeting.

FOrasmuch as it hath been duely proved before me, according to the *Canab.* stat. in that behalf provided, that all and every the persons hereunder named, being inhabitants within your Parish of W. upon the 12. day of this instant moneth of November, have bin and continued drinking and tipling in the house of G. W. of your said town (Inne-keeper, or Alehouse-keeper) contrary to the forme of the same statute: These are therefore in his Majesties name to charge and command you, and every of you, forthwith to levie by distresse and sale of the goods of every the said persons hereunder named, the summe of three shillings and foure pence a peece, if they shall refuse or neglect forthwith to pay the same; (which severall forfeitures shalbe bestowed and employed by you to the use of the poore of your said Parish) and that you render to every of the said offenders the overplus that shall remaine upon your sale of their said goods: and if the said offenders, or any of them, shall refuse or neglect to pay their said severall forfeitures, and that you can find no sufficient distresse whereon to levie the same, that then you the Constables, or one of you, shall commit every such offender or offenders (refusing or neglecting to pay the said summe or forfeiture, and not having sufficient whereon to be distrained for the same) to the stocks, there to remain by the space of foure houres: and this shalbe your sufficient warrant herein, Dated, &c.

But before the Just. of P. shall grant these two last warrants, he shall do well first to send for the offenders, and to examine them of the offence, &c. See *hic* cap. 7.

A Warrant to convent all victuallers, &c. so put in sureties for observing Fish-dayes according to Proclamation.

To the High-Constables of the Hundred of Radfield,
and to either of them.

THese are in the Kings Majesties name to command you to warnall the Inne-holders, Taverners, Cooks, Alehouse-keepers, Butchers, and other Victuallers whatsoever within your Hundred, personally to appeare before us at *Lynton* upon Thursday, being the twentieth day of this instant *Februarie*, at the signe of the Griffin there; and to bring with them sureties that shall enter into bond with them, to his Majesties use, for the due observacion of the orders lately published for the restraint of killing, dressing, and eating of flesh in Lent, or upon Fish-dayes, according to his Majesties Proclamation in that behalfe, and that you, or one of you,

be then and there with us, to deliver us a note in writing of the names, firmes, and dwelling places of every of them, and of all other that victuall without Licence within your Hundred, as you will answer the contrary at your perils. Dated at Westwratting the first day of Februarie, &c.

Against Alehouse-keepers.

Also a Warrant (like unto the last but one) may be made to levie the forfeiture of Inne-keepers, or Alehouse-keepers, for suffering townsmen or others to continue drinking in their house, or for selling lesse than one quart of their best Beere or Ale for 1 d. saving that the distresse taken of such Inn-keepers, and Alehouse-keepers, is not to be sold till after sixe dayes, and then, for default of satisfaction, the same are presently to be apprifed and sold, and therefore such warrant must therein be made accordingly. See 1 Jac. cap. 9. P. 7. 8.

To levie the forfeiture for not keeping the assise, &c.

Thomas Tirrell Esquire, one of the Kings Majesties Justices, &c. Forasmuch as it hath been duely proved before me (according to the statute in such case provided) that G. W. of your said towne, Alehouse-keeper, hath lately uttered or sold (in his house) lesse than one full Ale-quart of the best Beere for one pennie, contrary to the form of the same statute: These are therefore in his Majesties name to charge and command you forthwith to levie, by distresse of the goods of the said G. W. the sum of xx. s. the same to be bestowed and imployed by you to the use of the poore of your Parish; and if the said G. W. within six daies next after such distresse by you taken, shall not pay the said xx. s. that then you cause the said distresse presently to be prised and sold, and the over-plus that shall remaine upon your said sale of the said goods, that you render the same over-plus to the said G. W. and this shalbe your sufficient warrant herein. Dated, &c.

Before the Justice shall grant out these two last warrants, he shall do well also first to heare and examine the offenders.

A warrant for the removing of a petie Constable,
and for the swearing of another.

Causing.

Carolus Deigra, &c. vicecom' Cantabr', Necnon capitali Constabul' hundredi de R. & eorū cuilibet salut', Quia W. P. & R. S. subconstab' villa de C. & K. (cervis de causis nos moventi) ab officio suo amoveri & exonerari fecimus; Ideo vobis & cuilibet vestrum conjunctim & divisim precipimus & mandamus, quod I. F. & R. M. ad omnia & singula eidem officio incumbencia bene & fideliter exercenda & exequenda (prout ipsi nobis inde respondere voluerint) jurare faciatis: distisq; W. P. & R. S. similiter injungentes, quod ipsi de dicto officio ulterius exercendo & exequendo nullatenus se intromittant, quousq; aliud de nobis habuerint mandatum: Et quicquid inde fecerint, Justiciarius nostris ad pacem nostram in dicto com' conservan' assign' ad prox' general' sessionem pacis apud C. in dicto com' tenenda, certificent, Hoc preceptum nostrum tunc & ibidem remittentes. Teste Roberto Lawrence Armig. uno Justic' nostrorum prædicti tali die, &c.

You

Lamb. 17. 3. You shall find this former president in *M. Lamb.* But upon such warrant, *quare* who shall give the oath to the new Constables, whether the High Sheriffe, or High Constable that shall execute such warrant, or the Justice of peace that granted out such warrant.

For this authoritie of removing pety Constables, and of choosing and swearing new, is reputed properly to belong to the Leet, (it being one of the ancientest Courts in the Realme. *Br. Leet 14.*) and if the new elect be not present at the Leet to take his oath accordingly, then upon certificate or notice thereof to any Justice of peace of that Countie, the Justice doth use to send his warrant for the party so chosen, and to give them their oath. *Vide hic cap. 16.*

Also in default of the Leet, or otherwise, where there shall be just cause to remove a pety Constable, for his insufficiencie, or for any misdemeanor, or other cause, every Justice of peace, *ex officio*, (as it seemeth) may remove the old Constables, and may choose and sweare new: which also we see to be warranted by common experience. See *Lamb.* of the duties of Constables, *pag. 19.*

And I have seene some presidents to such purpose as followeth:

To our loving friend A. B. of W. Teoman.

THese are in his Majesties name to charge and command you, to make your repaire unto us, or to some other Just. of peace of this Countie, to take the Oath of a Constable to serve his Majestie within the Towne of W. (* according to the choice made of you by the Jury at the last Leet holden in your town.) And hereof faile you not. Dated under the hands of us *John Layer* and *Martin Pierce* Esquiers, two of his Majesties Justices of peace, &c.

*If they were
not chosen
at the Leet,
this clause is
to be left out

The forme of the Oath concerning the office of a Constable.

YOU shall sweare, that you shall well and truly serve our Sovereign Lord the King in the office of a Constable: you shall see and cause his Majesties peace to be well and duly kept and preserved according to your power: you shall arrest all such persons as in your sight and presence shall ride or goe armed offensively, or shall commit or make any riot, affray, or other breach of his Majesties peace: you shall do your best indeavour (upon complaint to you made) to apprehend all Felons, Barretters, and Rioters, or persons riotously assembled: And if any such offender shall make resistance, (with force) you shall levie Huy and Cry, and shall pursue them untill they be taken: you shall doe your best indeavour that the Watch in and about your towne be duely kept for the apprehending of Rogues, Vagabonds, Night-walkers, Evisdroppers, Scouts, such as goe armed, and the like; and that Huy and Cries be duly raised and pursued, according to the statute of Winchester, against Murtherers, Theeves, and other Felons. And that the statutes made for the punishment of Rogues and Vagabonds, and such other idle persons, comming within your bounds and limits, be duely put in execution: you shall have a watchfull eye to such persons as shall maintaine or keepe any common house or place where any unlawfull game is or shall bee used; as also to

such as shall frequent or use such places, or shall use or exercise any unlawful games there, or elsewhere, contrary to the statutes. At your Assises, Sessions of the peace, or Leet, you shall present all and every the offences done, contrary to the statutes made (1. Jacobi, 4. Jacobi, & 21. Jacobi Regis) to restrain the inordinate haunting and tippling in Innes, Alehouses, and other Victualling houses, and for repressing of drunkenness: you shall there likewise true presentment make of all blood-sheddings, affrayes, out-cries, rescous, and other offences committed or done against the Kings Majesties peace, within your limits: you shall once every year, during your office, present at the quarter sessions all Popish Recusants within your Parish, and their children above 9. and their servants, (sc. their monthly absence from the Church:) 3. Jac. 4. and you shall have a care for the maintenance of Archerie according to the statute: you shall well and duely execute all precepts and warrants to you directed from the Justices of peace of this county: and you shall well and duely according to your knowledge, power, and abilitie, doe and execute all other things belonging to the office of a Constable, so long as you shal continue in this office, So help you God.

This oath I have set downe the more largely, thereby to shew the principall matters whereof the Constables are chiefly to have care.

The forme of a Superedeas by a Justice of Peace. CAP. 122.

Richard Love Doctor of Divinitie, and Vice-Chancellor of the University of Cambridge, one of the Justices of peace of our Sovereigne Lord the Kings Majestie, within the county of Cambridge, to the Sheriffe, Bailiffes, Constables, and other the faithfull Ministers of our Sovereigne Lord within the said Countie, and to every of them, sendeth greeting. Forasmuch as A. B. of, &c. Yeoman, hath personally come before me at

&c. and hath found sufficient suretie (that *is to say, C. D. and E. F. &c. Yeomen; either of the which hath undertaken for the said A. B. under the paine of twentie pounds) and he the said A. B. hath undertaken for himselfe under the paine of fortie pounds, that he the said A. B. shall well and truly keepe the peace toward our Sovereigne Lord, and all his liege people, and especially towards G. H. of, &c. Yeoman, and also that he shall personally appeare before the Justices of the peace of our said Sovereigne Lord, at the next generall Sessions of the peace to be holden for this Countie of Cambridge: Therefore on the behalfe of our said Sovereigne Lord, I command you, and every of you, that you utterly forbear and surcease to arrest, take, imprison, or otherwise by any meanes (for the said occasion) to molest the said A. B. And if you have (for the said occasion, and none other) taken or imprisoned him, that then you doe cause him to bee delivered; and set at libertie without further delay. Yeoven at Cambridge aforesaid, under my seale this last day of Julie, &c.

*The Superedeas is good though it name neither the sureties nor the summe.

Alias

Alias.

Thomas Comber sacre theologie doctior, &c. unus Justic' domini Regis, &c. omnibus Ballivis & ministris domini Regis infra Com'prad' & eorum cuilibet salutem. Quia A.B. & C.D. coram me personaliter constitui manuceper' pro I.S. sub pœna xl.li. quas concesser' & uterque eorum per se pro toto & in solid' concessit ad opus dicti Domini Regis, levari si dampnum vel malum aliquod W.T. eveniat de corpore suo, &c. per dictū I.S. vel per procur' suū quovismodo, vobis & cuilibet vestrum ex parte Domini Regis mando, quod captione corporis ejusdem I.S. quocunque modo censeatur preiextu alicujus precepti sine Warr' vobis seu alicui vestrum in hac parte directū seu dirigend' supersedeatis & sine delatione deliberari fac'. Datum, &c.

Aliss.

Henricus Bing Serviens ad Legem, unus Justic' domini Regis, &c. vic' ac omnibus & singulis ballivis, ministris & fidelibus dicti domini Regis in eadem Com' & eorum cuilibet salutem, quia I.S. suffic' secur' de pace (& de bono gessu suo) erga dictū dom' Regem, & precipue erga W.T. coram me inveni, Ideo ex parte dicti domini Regis vobis & cuilibet vestrum mando & precipio firmiter injungens quod de ipso I.S. pro hujusmodi secur' pacis inveniend' cap': sive arrestand' omnino supersed'. Et si ipsum I.S. ea occasione ceperitis sive imprisonaver' tunc eum deliberari fac' si ipsum ea occasione & non alia detineatur. Teste, &c.

If the prisoner be in the gaole, see another forme *hic postea sit*. Liberat.

Note that such *Supersedeas* is good, though it name neither the sureties, nor the summes wherein they are bound; but yet it is the better form to expresse them both, for then if it shall appeare that the sureties are not sufficient men, or not bound in sufficient summes, better sureties may be taken: And accordingly all the *Supersedeas* issuing out of the Chancery, Kings Bench, and Court of Common Pleas, doe rehearse the names of the sureties, and the summes; and those things which the higher Court doe use, are the Rules and Orders for others to follow, &c. 2.H.7 fol. 1. Fitz. *Supersed.* 4.

The forme of a *Supersedeas* (by a Justice of peace) upon a Writ of *Supplicavit* against an Infant.

Samuel Collins sacre theologie doctior, unus Justic' domini Regis p'unc canabr. ad pacem in com. prad. conservand. assignat, vicecom. ejusdem com', ac omnibus & singul' ballivis, constabular, ceterisq; dicti dom. Regis ministris, tam infra libertates, quam extra in com. prad. salutem: Sciatis quod breve dicti domini Regis recepi in hac verba, Carolm, &c. (reciting here all the Writ verbatim) Et quia I.B. de, &c. I.S. de, &c. Es presat' C.A. coram me pres. Samuele Collins, personaliter comparuer', & pradi. I.B. & I.S. manuceper' pro dicto C.A. qui infra ætatem 21. annor. existit: viz. quolibet manuceptor. prad. in 20.li. quas recognover' se debere dicti domini Regi, ac concess. de terris & tenementis, bonis & catallis suis, ad opus dicti domini Regis levand' viz. qd' prad' C.A. dampnum vel malum aliq. alicui de populo dicti dom. regis de corpore suo, vel de incendio domorum suarum non facer' nec fieri procurabit quovismodo: Ideo ex parte dicti domini Regis vobis &

cuilibet vestrum mando, qd' de coarctand' aut attachiand' dictum C. A. ad inveniendam aliquam securitatem pacis per ipsum gerend' erga dictum dom' reg' & cunctum popul. suum, seu alicui de eodem populo suo coram vobis, seu aliquo vestr. inveniend' supersed' seu supersed' fac' omnino. Et si ipsum C. A. occasione prad' & non alia ceperitis, seu capi mandaver', & in prisona ipsius dom' Regis, sub custodia vestra deteneritis, tunc ipsum a prisona in qua detinetur sine dilacione deliber' fac' seu annu vestr' deliberari fac'. Teste me prafat' Sam. Collins, 22. die Nov. anno regni dicti dom' Reg' & c.

Alius.

Henicus Smith sacra theologia doct'or, & c. unus Just' domini Reg' & c. Vic' Com' prad'. Necnon omnibus constabulariis, ball', ac aliis ministris dicti dom' Regis, & eorum cuilibet, salutem. Sciatis, quod mandai' (aut Breve) dom' Regis in hac verba recepi. Carolus Dei grati & c. (reciting all the Writ) Et quia I. B. de, & c. & I. S. de, & c. Et prad' T. C. coram me praf. H. S. personaliter com' & prad' I. B. & I. S. pro prad' T. C. manuceper' quilibet manucapi' prad' sub pena xx. li. & prad' T. C. pro seipso assumpsit sub pena xl. li. de terris & catallis suis ad opus dicti dom' reg' levand' Ideo, & c. Quod prad' T. C. dampnum vel malum, & c. ut sup.

A Superfedeas for the good behaviour.

Note that upon good sureties taken, (for the good behaviour) a *Superfedeas* of the good behaviour may be granted, as for the P. *minaris mutandis.* Crompt. 376.

Note also, that a *Superfedeas de Capias indictatum de transgression*, and so of an *Exigent*, may be granted by the Just. of P. out of Sessions: For otherwise it were mischievous for the party, as well by reason of his imprisonment, as also for that he may be outlawed before the Sessions, if the Just. of P. might not take sureties of him for his appearance; and all is but to appeare to answer to the indictment.

And M. Crompton is of opinion, that these may be granted by any one Ju. of P. with whom agreeth the book of Entries. But M. Lambert thinketh it not in the lawfull power of any one Just. of P. to grant such *Superfedeas*, at this day, but that it must be done by two Ju. at the least, and the one being of the *Quorum*: nevertheless, for that I find the old Presidents to run in the name of one Justice of peace alone, I have drawne these accordingly; perfwading notwithstanding the joyning of two Justices herein, and the one of the *Quorum*, if they may conveniently. Crompt. 376. hic 375. Li. Int. 601. Lamb. 598. & 77 1.

A Superfedeas de Capias indictatum de transgress.

Contab.

Thomas Bambridge sacra theologia doct'or, unus Just' dom' Reg' nunc ad pac' in com' prad' conservand'. Necnon ad divers' felon', trans. & c. in eod' com' audien' & termin' a sig. vic' com' prad' salui'. Quia C. D. de A. in com' tuo, Ycoman, veni coram me, & inven' suffic' manucaptores esfendi coram Just' dicti dom' Regis ad pacem in com' prad' conservand' (Necnon ad diversa felon' & c. in dicti com' audiend' & terminand' a sig.) ad generalem sessioni pacis apud C. in com' prad' prox. die tenend' ad respond' dicti dom' reg' de quibusdam transgr' contemp' & offensis, unde indit' existit: Ideo ex parte dicti

dicti dom' regis, tibi precipio qd' de capiend' præf. C. D. seu ipsum imprison'
aut eum, ea ex causa aliquali' molest' omnino supersed' & si cū, ea ex causa,
& non alia ceperitis, tunc ipsum sine dilatione deliber' faciat' Teste me, &c.

Alias, quia invenit plegios pro fine.

Crom. 334.

Thomas Wilson sacre theologie doctor, unus Just' dicti dom' Reg' ad Cantabr.
pacem in com. præd' conservand', Necnon ad divers. fel' trans. & alia
malefacta in eod' com' audiend' & terminand' assign' vic' com' præd' ac
omnibus & singulis ballivis, constabul', ceterisque dicti dom' regis ministris, jã
infra libertates quam extra in com' præd' salutem: Licet nuper per Breve (vel
præceptum) dicti domini Regis vobis seu uni vestrum præceptum fuit qd' ca-
peritis seu unus vestrum caperet A. B. de S. in comitat' præd' Ycoman, si in-
venit fuerit in eodem, & ad ipsum salvo custod', Ita quod haberetis seu unus
vestrum haberet corpus ejus coram custodibus pacis, ac Justiciar' dicti domini
Regis ad pacem in com' præd' (Necnon ad diversa felonias, transgres. & alia
malefacta in eodem comitat' audiend' & terminand' assignat' apud Cantabr'
tali die ad respondend' dicto dom' Regi de contemp', & transgres. unde coram
dictis Just' indictum existit: quia modo prædictus A. B. venit coram me, &
inven' sufficienti plegios pro fine suo cum dicti dom' Rege pro præmis faciend'
Ideo ex parte dicti dom' Regis vobis conjunctim & divis. mando quod ad exe-
cutionem Brevis prædict' ulterius fac' supersed' omnino. Et si ipsum A. B. ea
occasione & non alia ceperitis, & in prisoa dicti dom' Regis detineritis, tunc
ipsum sine dilatione ab eadem deliber' faciat' seu unus vestrum delib' faciat'
& habeatis, seu unus vestrum habeat hoc præceptum ad Sessiones præd. Dai'
die Augusti, anno regni, &c.

Superfedeas de capias pro fine.

Crom. 334.

Johannes St-George Armiger' unus Justic' dom' Regis nunc ad pacem in ^{Cantabr.}
com' præd' conservand' assign' Vic' Com' præd' salutem. Quia C. D. de A.
in dict' com' Ycoman, venit coram me, & inven' sufficienti manucapi' ef-
fendi ad proximam generalem Sess. pacis in comitat' præd' tenend' ad faciend'
finem cum dicto dom' rege pro quibusdam transgr' contemp' & offensis, un-
de indictum existit, Ideo tibi precipio, quod de capiend' præf. C. D. impriso-
nand' seu ipsum ea occasione aliquali' molestand' omnino supersed' & habeas
ibi tunc hoc præceptum, Teste me, &c.

Superfedeas de Capias indictat' de felonias.

Crom. 334.

TAlbot Pepis Armig' unus Justiciar' domini regis nunc ad pacem in ^{Cantabr.}
com' præd. conservand' assignat' vic' comit. præd. Necnon omnibus &
singulis ballivis, constabul', ceterisque dicti domini Regis ministris
tam infra libertates quam extra in dicti. com. saluti. Quia A. B. de C. in com.
prædict'. Husbandman, venit coram me, & inven' sufficienti secur. essendi corã
Justic' dicti dom' regis ad pacem in com' præd' conserv' (Necnon ad diversa
felonias, transgr. & alia malefacta in eodem com' audiend' & terminand' as-
signat' ad prox. general. Sess. pacis in com. præd. tenend. ad respond' dicti dom' Regi,
de divers. felon' & transgr. unde coram eis indict' existit, Ideo ex parte dicti
dom' reg' vobis & cuilibet vestrum mando, quod de capiend' præd' A. B. ea ex
causa supersed' omnino, & si eum ea occasione & non alia ceperitis seu impris.
tunc ipsum sine dilatione deliber' faciat', Dai' &c.

Super-

Superfedeas de exegi fac' de feloniam.

Cantabr. **C** Arolus, &c. vic' com' Cantabr' salutem. Quia C. D. de A. in com' suo Yeoman, venit coram E. F. &c. & invenit sufficien' manucapion. es-
fendi coram custod' pacis nostrae (ac Just' nostris ad diversas felonias, &c.) ad generalem session' pacis nostrae apud C. tali die tenend' ad respondend' nobis de quibusdam felonis unde indictatus est, Ideo tibi precipimus quod de ulterius exigend' prefat' C. D. ad aliquod comitat' tuum, vel imprisonand', sive ipsum ea occasione aliquatiner molestand' omnino superesed' & habeas ibi tunc hoc breve. Teste Willicmo Marche apud H. tali die & anno.

Superfed' ad deliberand' prissonar' capt' pro transgress. vel simil'.

M. D. ar. unus Justic' &c. Constabul' ville de B. Necnon custodi Gaole disti domini Regis in Com' prae' salutem. Quia W. C. de B. Laborer venit coram me, & invenit suffic' securitat' essendi coram Just' disti Domini Regis ad proxim' generalem session' pacis in com' praed' tenend' ad respond' tam domino Regi quam B. C. de quibusd' transgress. seu contemptibus, &c. per ipsum perpetratis. Ideo vobis & cuilibet vestrum mando, qd' praedict' W. C. a custodia vestra sine delatione deliberari faciat, & alio mandato meo inde direct' interim supersedeat: Et hoc mandatum meum erit vobis & cuilibet vestrum warrant'. Datum apud Westorating' tali die, &c.

Recognisances. CAP. 123.

A single Recognisance taken before
Justices of Peace.

Cantabr. **M** Emorand' quod die anno Regni domini nostri Caroli Dei gratia Anglia, Scotia, Fran' & Hib' Regis, fidei defensoris, &c. venerunt coram Mi. Dalton, & Isaac Barrow armiger' Justiciar' disti domini Regis ad pacem in Com' C. conservand' assignat' I. S. de Bin comitat' praedict' Yeoman, & W. S. de eadem Weaver, ac R. D. de S. in comitat' praedict' Tylor, & recognover' se debere dicto domino Regi, viz. quilibet manucapi' praed' quinque libr', & praedict' I. S. decem libr' bone & legalis monetae Angliae, (solvend' eidem dom' regi in festo Purificationis beatae Mariae virginis proxim' futur' post dat' praesent.) Et nisi fecerim, concesserunt pro se hered' executor' & admissis suis per praesentes quod dicta se-
perales summa levare & recuperare de maneris, messuagiis, terr' tenementis, bonis, casallis, & hereditamentis ipsor' I. S. W. S. & R. D. hered' executor', & assign' suor' ubicunq' fuerint inveni. Dat' &c.

Another single Recognisance.

Cantabr. **M** Emorand' qd' die anno regni domini nostri Caroli Dei gratia, &c. D. E. de Ballham in com' praed' Yeoman, personalit' venit coram me Mi. Dalton armig' uno Just' disti dom. regis ad pacem in com' praedict' conservand' assign' & recogn' se debere dicto dom' regi 10. lib. bona & legal' monetae Angl' (de bonis & casallis, terr' & tenementis suis

suis fieri & levari, ad opus dicti dom' regis hared' & successorum suorum) si defecerit in condicione indorsata.

Alias.

Memorand' qd' die an. regni, & c. vener' coram me M. D. Cantab. uno Just' & c. assign. T. H. de Westwraii in com' prae'd' Yeoman, & I. S. de eisdem vil' & com' Husbandman, & manuceper', & uterque eor' separatim manuceper' sub pœna 5. li. legalis monetae Angliae pro W. St. de W. prae'd' Tailor, * Et prae'd' W. St. assump. pro seipso sub pœna 10. l. consimilis monetae Angl' quas quidem separales summas recognover' & quilibet eorum ut prae'dicitur recognovit se debere dicto dom' regi de terris & tenem' bonis & catallis suis fieri, & c. Si prae'd' W. St. deficerit in perform' condit' introscript.

If the partie to be bound be within age, then shall he be bound by sureties onely, (but he himselfe shall not be bound) and then shall the Recognisance be *ut supra*, to this marke(*) and then as followeth: *Qui infra aetatem xxi. annorum existit, Quas quidem separales summas recognover' & uterque eorum ut prae'dicitur recognovit se debere, & c. ut supra.*

A Recognisance for the Peace.

Memorand' qd' die anno regni dom' nostri Caroli Dei gra', & c. R. P. de E. in com' prae'd' Yeoman, in propria person' sua venit coram me Tho. Tirrel armig' uno Just' dicti dom' reg' ad pacem in dicto com' conservand' assign' & assumpsit pro seipso sub pœna 20. li. & H. I. de L. in com' prae'd' Yeoman, & N. N. de, & c. & P. Q. de, & c. Husbandmen, tunc & ibid' in propriis personis suis similiter vener', & manuceperunt pro prae'd' R. P. viz. quilibet eor' separat' sub pœna 100. s. qd' idem R. P. personalis' comparabil' coram Just' dicti dom' reg' ad pacem, ad prox. general' sessionem pacis in com' prae'd' tenend' ad faciend' & recipiend' qd' ei per curiam tunc & ibid' injungeretur: Et qd' ipse interim pacem dicti dom' regis custodiet erga ipsum dom' reg' & cunct' popul' suum, & praecipue versus M. N. de prae'd' Yeoman, & qd' dampnum vel malum aliq' corporale aut gravamen praef. M. N. aut alicui de populo dicti dom' regis, quod in lesionem aut perturbationem pacis ipsius domini Regis, seu praef. M. cedere valeat quovismodo, non faciet, nec fieri procurabit. Quam quidem sum' viginti lib' prae'd' R. P. & quilibet manucapi' prae'd' prae'dictas separales summas cent. solid' recognover' se debere dicti dom' regi de terris & tenementis, bonis & catallis suis, quorumlibet & cujuslibet eor', ad opus dicti dom' regis hared' & successor' suor' fieri & levari (ad quorumcunque manus devenerint) si contingerit ipsum R. P. premissa, vel in eorum aliquod in aliquo infringere, & inde legitimo modo convinci, In cujus rei testimon' ego prae'dictus Tho. Tirrel sigillum meum apposui, dat' apud, & c.

And if the Justice shall onely subscribe his name to the Recogn. without his seale, it is well enough; and so is the usuall course and form with us, and that in either of these sorts; sc. *Recognis' coram me R. Th.* or onely to subscribe the Justices name thus, *R. Th.*

Or thus for the Peace.

Lamb. 109.

Memorandum, quod die, & c. A. B. de & c. & C. D. de Cantab. eadem, Yeoman, venerunt coram me Johanne Layer armiger' uno Justiciar',

Justiciar' &c. & manuceperunt pro I. S. nuper de L. &c. quod ipse personaliter comparabit coram me prefato Johanne Layer & sociis meis Justiciar' pacis domini regis ad proximam generalem session', &c. & quod ipse interim geret pacem erga cunctum populum Domini Regis, & precipue erga R. B. &c. viz. quilibet manucapitorum predictorum sub pœna viginti librar'. Et predictum I. S. assumpsit ut supra pro seipso sub pœna quadragini librar'. Quam quidem summam quadragini libr' præd' I. S. & quilibet manucapitorum præd' dict' summam viginti librar' recognoverunt, &c. ut supra.

And this may be well done also by a single Recogn. in Latin, *ut supra*, with a Condition added, or endorsed in English, for the keeping of the peace, and for the day and place of the parties appearance at the quarter Sessions, as followeth.

A Condition to keep the Peace.

THE Condition of this Recognisance is such, that if the within bounden I. S. shall personally appear before the Justices of our said Sovereign Lord the King, at the next generall Sessions of the Peace to be holden in the said Countie of Cambridge, to doe and receive that which by the Court shall be then and there enjoined him: And that he in the mean time doe keep the peace of our said Sovereign Lord the King, towards the Kings Majestie and all his liege people, and especially towards A. B. of C. aforesaid, Yeoman, That then, &c.

A Recognisance for the good behaviour.

MEmorand' qd' *die mensis* *anno Regni Caroli, &c.*
R. G. de, &c. & H. C. & I. S. de ead', &c. in propriis personis suis
vener' coram nobis Isaac Baro, & Roberto Hagar Armiger', Just'
dicti dom' Regis, &c. Et predicti H. C. & I. S. manuceperunt pro prefato R. G.
& idem R. G. ad tunc assumpsit pro seipso, qd' idem R. G. personaliter compara-
bis coram Just' dicti domini Regis ad pacem, &c. ad proximam generalem
*Sessionem, * &c. Et quod ipse interim se bene geret erga dominum Regem &*
cunctum populum suum, & precipue erga I. B. de C. &c. sc. qd' ipse non infe-
ret, nec inferri procurabit, per se, nec per alios, damnum aliquod seu gravam
prefato I. B. seu alicui de populo ipsius Dom' Regis de corporibus suis, per in-
sidias, insultus, seu aliquo alio modo, quod in lesionem seu perurbationem pa-
cis dicti Domini Regis cedere valeat quovismodo, viz. uterque præd' H. C. &
I. S. sub pœna centi libr', & præd' R. G. sub pœna ducenti libr': Quas quidem
separales summas centi libr' uterque predictor' H. C. & I. S. (ut prædicitur)
per se, ac predictum R. G. predict' summam ducenti librar' recognoverunt se
debere dicto Dom' regi de terris & tenem', bonis & catallis suis & quorumli-
bet, ac cujuslibet eorum, ad opus ipsius dicti dom' Regis fieri & levari, si contin-
gat præf. R. G. in aliquo premissor' deficere, & inde legitimo modo convinci.
Dai', &c.

See the Re-
cog. for the
Peace.

Lib. Int. 467

Or thus, for the good behaviour.

Cantabr.

MEmorand' quod *die mensis* *anno regni*
Caroli, &c. N. G. de, &c. in propria persona sua venit coram nobis
Isaac

Isaac Baro, & Roberto Haggar, *Armigeris*, *Iust' dicti domini Regis ad pacem in dicto Com' conservand' assig'*: Et assumpsit pro seipso sub pæna 200. li. Et H. C. & I. S. de eisdem villa & Com' Husbandman, tunc & ibidem in propriis personis suis similiter venerunt, & manuceperunt pro præfato N. G. viz. uterque eorum separatim sub pæna centum lib'. Quod idem N. G. personaliter comparabit coram *Iust' dicti dom' Regis ad pacem*, &c. ad proximam generalem Sessionem pacis in Com. præd' tenenda ad faciend' & recipiend' qd' eiper Cur' tunc & ibidem injungetur. Et quod ipse interim se bene geret erga dom' Reg', & cunctum populum suum, & præcipue erga I. B. de C. &c. sc. qd' ipse non inferet, nec inferri procurabit, per se nec per alios, dampnum aliquod seu gravamen præfato I. B. seu alicui de populo ipsius dom' regis de corporibus suis, per insidias, insultus, seu aliquo alio modo, quod in lesionem seu perturbat' pacis dicti dom' regis cedere valeat quovismodo. Quas quidem separales summas, &c. ut supra.

Or by a Recognifance, with this Condition
subscribed or indorsed.

THe Condition of this Recognifance is such, That if the above bounden R. G. shall personally appeare before the Justices of our Sovereigne Lord the King, at the next generall Sessions of the peace, to be holden in the Countie of C. to doe and receive that which by the Court shalbe then and there enjoyned him: and that in the mean time he be of good behaviour (and doe keepe the peace of our said Sovereigne Lord the King) towards his Majestie, and all his liege people, That then, &c.

Or thus.

Conditio Recognitionis præd' talis est, Quod si prædict' N. G. impofter se bene geret, (& pacem dom' regis conservabit) erga dict' dom' Reg' & cunctum populum suum, qd' tunc recognitio præd' pro nullo teneat, alioquin in suo robore permanere.

Or thus.

Lamb. 1. 5.
Lib. 4. 39

Conditio Recognit' prædict' talis est, Quod si prædictus R. G. impofterum se bene geret, & pacem dom' regis conservabit, erga dictum dom' reg' & cunctum populum suum, & præcipue erga I. B. de, &c. & nullum dampnum corporale, nec aliquid qd' in lesionem pacis dom' Regis cedere valeat præfato I. B. seu alicui de populo ipsius Domini Regis faceret quovismodo, ex tunc recognitio prædicta pro nullo teneatur, alioquin in suo robore permaneat.

33. H. 8. c. 19.

Note, that all Bonds, Obligations, and Recognifances that shall be taken by any Justice of Peace (or other person) for any cause touching the King, must be made and taken in the Kings name, and by these words, *Domino Regi, &c.* See hereof antea, tit. Suretie for the Peace, and Recognifances.

Also note that the Recognif. runneth, *De terris & tenementis, bonis & catallis, &c. fieri & levare, &c.* And yet the King may be at his election, to take execution of the body of the Recognizors, (as well of the principall, as of the sureties) or of their lands and chartels, (for the summe

in

in the Recognisance contained) *per Curiam* 7. Hen. 4. 34. a. *Vide antea, iii. Suretie for the Peace.*

And (it seemeth) by the Common Law, before the statute of 33. H. 8. 39. that in all cases where a man is a debtor to the King, as well his body as his lands and goods, are liable to the Kings Execution: For *Theſaurus regis est pacis vinculum, & Bellorum nervi.* And therefore the law doth give to the King full remedie for it. See *Coke* 3. 12. b. & *Coke* 11. 93. a.

A Recognisance to give in Evidence
againſt a Priſoner.

Canlabr.

Memorandum, quod die anno regni domini nostri Caroli, Dei gratia Anglia, Scotia, Francia, & Hibernie regis fidei Defens. decimo, &c. R. T. de C. in Com' prad' Yeoman, venit coram me Ro. Th. Armig' uno Justic' diſi Dom' Reg' ad pacem in Com' prad' conſerv' and assignat', & cognovit se debere diſo Domino Regi quinque libr' legalis monete Anglia, sub condicione quod si ipse personaliter comparabit coram Just' diſi Dom' Regis ad proximam generalem gaolam delib' in Com' prad' tenend' ad tunc & ibid' ostendendum in evidenc' secundum formam Stat. vers. D. F. nuper de W. in Com' prad', qui modo attach' & suspect' felonie Gaule diſi Dom' Regis Com' prad' commissus existit, quod tunc, &c. Alioquin, &c.

Or this may be done by a single Recognisance, with a Condition endorsed, as followeth.

A Condition to preferre a Bill of indictment, and to give
in evidence against a Priſoner.

THe condition of this Recog. is such, that whereas one A. B. of G. Laborer, was this present day brought before the said Just. by the within bound D. E. and was by him charged with the felonious taking of xx. sheep, of the goods of him the said D. and thereupon was sent by the said Just. to the Kings Majesties gaole: If therefore he the said D. E. shall and do at the next generall gaole deliverie (to be holden in the said County) preferre or cause to be framed and preferred one Bill of Inditement of the said felony against the said A. B. and shall then also give evidence there concerning the same, as well to the Jurors that shall then enquire of the said felony, as also to them that shall passe upon the triall of the said A. B. that then, &c. or else to stand in full force for the King.

Or thus, to give in evidence.

THe condition, &c. that if the above bounden D. E. doe at the next generall Sessions, &c. pursue and give such evidence as he knoweth against A. B. now priſoner in the Castle of C. concerning certaine felonious acts by him committed: then, &c.

A Condition to appeare before the Justices of Peace
at their next Sessions.

Conditio istius Obligationis talis est, quod si *A.W. de &c. Spinster*, in propria persona sua compareat coram Justic' Domini Regis de pace in Com' C. conservand. a sign. (necnon ad &c.) ad prox' Sessionem pacis dicti domini Regis in com' pradienend. ad respondend' tam dicto domino regi, quam G. S. de placito transgressionis et contemptus contra formam statuti servienti. Quod tunc præsens Obligatio vacua, et pro nullo habeat, & si pradiet A. contra pramissa seu eorum aliquod in futur' fecerit, quod tunc præsens obligatio in omni suo robore stet et effectu, &c.

Or thus.

THe Condition of this Recognisance is such, That if the within bounden *A.W.* shall make his personal appearance before the Kings Majesties Justices of the peace at the next quarter Sessions of the peace to be holden for the said county of Cambridge, then and there to make answer unto such matters as on his Majesties behalfe shall be objected against him (by *A.B.* of &c. or concerning &c. & there shew the matter shortly) and shall also stand to, and abide such further order as the said Court shall award or set downe therein, That then and from thenceforth this present Recognisance shall be frustrate and void, or else to remaine in his full force, strength and vertue.

Another for him that hath dangerously hurt one.

THe Condition of this Recognisance is such, That whereas the within bounden *R.W.* hath now lately dangerously hurt one *I.T. of F.* within the said County of Cambridge, Yeoman, giving him divers blowes on the head, face, and left side with a Bill, so as the said *I.T.* is in danger of death thereby: If therefore the said *R.W.* shall make his personall appearance before the Kings Majesties Justices at the next generall Gaole delivery, to be holden in the said County of, &c. Then and there to make answer unto the premises, and to do and receive that which by the Court shalbe then and there enjoyned him, And that he, the said *R.W.* in the meane time doe keep the peace of our said soveraigne Lord the King, towards the Kings Majesty, and all his liege people, That then, &c.

A Condition for Alehouse-Keepers.

THe condition of this Recog. is such, Whereas the within bounden *A.B.* is admitted and allowed by the within named *Sir Ed. Peyton* and *Hen. Vernon* (two of the Kings Majesties Justices of Peace within the County of Cambridge within written) to keepe a common Alehouse or Tipling house, and to use common selling of Ale or Beere, onely within the now house of him the said *A.B.* (and not elsewhere) situate in the high street of the Towne of *M.* within written, and called

This or the like forme, have heretofore bin allowable

Kk

the

the signe of the Hart : If therefore he the said A.B. during such time as he shall keepe such common Alehouse there, shall not suffer any unlawfull play at the Tables, Dice, Cards, Tennise, Bowles, Closh, Quoys, Loggets, or other unlawfull games to be used in his said house, or in his Garden, Orchard, or other his ground, or place, (especially by mens servants, Apprentices, common Labourers, or idle persons,) nor dresse, or cause, or suffer to be dressed any flesh to be eaten upon any day forbidden by the Lawes or Statutes of this Realme of England: nor wittingly and willingly admit, or receive into his said house, or any part thereof, any person notoriously defamed, of, or for theft, incontinencie, or drunkenness, or that shall be beforehand notified to him the said A.B. by the Constable of M. aforesaid, for the time being, or by his deputie, to be an unmeet person to be received into a common Alehouse: Nor shall keepe or lodge there any strange person, above the space of one day and one night together, without notice thereof first given to the Constable, or his deputie there. And finally, if he the said A.B. during all the time that he shall keepe common selling of ale or beere in the said house, shall and doe there use and maintain good order and rule: Then this present Recognisance to be void, &c. or else, &c.

Or where the Justices of peace at their meeting take divers such Recognisances, they were made shortly, as followeth.

Memorand' quod die Aprilis, an' regni dom' nostri Caroli, &c. coram nobis Ed. Peyton, milite & Baronei & H.V. armig' duobus Justiciar' &c. venerunt.

A.B. de Newmarket in Com' pradi' Victualler, & cognovit se debere dicto Dom' regi x.li. Et C.D. de, &c. & E.F. de, &c. uterque eorum recognovit se debere dicto Domino regi v.li. bona & legalis moneta Angl' de bonis & casualis, terris & tenem' suis, fieri & levare ad opus, &c. si defecerit in Conditione sequente.

The Condition of this Recognisance is such, That if, &c. (and write the Condition at large.)

G.H. de Newmarket, in Com' pradi' Victualler, & cognovit se debere dicto dom' regi x.li. Et I.K. de, &c. & L.M. de &c. uterque eorum recog. se debere dicto domino regi v.li. &c.

Sub Conditione ut supra.

N.O. de Newmarket, in Com' pradi' Victualler, & cognovit se debere dicto dom' regi x.li. Et P.Q. de, &c. & R.S. de, &c. uterque eorum recog. se debere dicto domino regi v.li. &c.

Sub Conditione ut supra.

T.V.

T. V. de Soham, in Com' praed' Victualler, & cognovit se debere dicti dom' regi x. li. Et W. W. de, &c. & I. S. de, &c. uterque eorum recog. se debere dicto domino regi v. li. &c.

Sub Conditione ut supra.

Et sic de cæteris.

For the maner of this Condition for Alehouse-keepers, it is (by the statute) partly referred to the discretion of such Justices of peace, as take such recognisance, or bond, as you may see before, *iii. Alehouses.*

And in some Shires the Justices of peace did condescend and agree upon certain Articles framed by their discretions, and generally to be propounded to all common Ale-sellers, taking the bond for the performance of the same articles: a copie whereof they did use to deliver to every of them, which maner was avowable also.

Amongst Articles of this kind, I did commend to the Justices care these three especially.

First, that no Alehouse-keeper upon the Sabbath day should receive or suffer to remaine any person whatsoever (as their Guests) in any their houses, or other places, to tipple, eat, or drinke; other than travellers, and such as come upon necessarie businesse.

Secondly, that they suffer no person whatsoever, resorting to their houses only to eat or drinke, to remain or be there after nine of the clock in the evening, from Michaelmas till Lady day; or from Lady day till Michaelmas, after ten of the clock at night.

Thirdly, that they suffer no person, resorting to their houses onely to eat and drinke, to remaine tipling there above one houre, other than travellers.

But note that now there be divers Articles of far better direction, published (touching Alehouses) by Proclamation, given by the Kings Majesty at Newmarket, the 19. day of Januarie, in the 16. yeare of his Highnesse reigne of great Britaine, France, and Ireland, *Anno dom' 1618.* in manner and forme following: *viz.*

First, that the Justices of peace of every Countie, Citie, or Town corporate within this Kingdome, and the dominion of Wales, doe once every yeere, in the moneths of April and May, assemble themselves, either at a speciall sessions, or such other meeting as they shall appoint for that purpose (respecting the ease and convenience of the people of the countie) and there call before them, or any two of them, (whereof one to be of the *Quorum*) all such persons as do sell ale or beere by retails in any place (as well within liberties as without) within such Countie, Citie, or Town corporate; and then and there to take true certificate and information from men of trust, who be persons of honest conversation, and who not: And to give licence to such persons, as they in their discretions shall think meet, to keep common Alehouses, or Victualling houses, within the places where such persons dwell.

2 That in the licensing of the said Victuallers and Alehouse-keepers,

the forme of the Recognifance, hereafter following , and the Condition thereunto annexed, be used, and none other.

Memorand' quod die anno regni domini nostri Caroli Dei gratia Anglia, Scotia, Francia, & Hibernia Regis, fidei defensoris, &c. coram T. P. & H. D. armiger' Justiciar' disti domini Regis ad pacem in Comitatu pradi' conservand' assignat', &c. A. B. de, &c. & C. D. de, &c. manuceperunt pro W. St. de, &c. Victualler, viz. uterque manucapi' pradi' sub poena quinque librar' & pradi' W. St. assumpsit pro seipso sub poena x. li. quas concesserunt se debere dicto dom' Regi, &c. Sub Condit' seq.

THe Condition of this Recognifance is such , That whereas the above (or within) bounden is admitted and allowed by the said Justices to keep a common Alehouse and Victualling house, untill the first of Aprill (or for the space of one whole yeere next ensuing the date hereof) and no longer , in the house where he now dwelleth, at in the said County of and not elsewhere in the said county . If therefore the said shall not, during the time aforesaid, permit or suffer, or have any playing at Dice, Cards, Tables, Quoits, Loggers, Bowles , or any other unlawfull game or games in his house, yard, garden, or backside ; nor shall suffer to be, or remaine in his house, any person or persons (not being his ordinary household servant) upon any Sabbath day, or Holy-day, during the time of Divine Service or Sermon ; nor shall suffer any person to lodge or stay in his house above one day and one night, but such whose true name and surname hee shall deliver to some one of the Constables, or in his absence to some of the Officers of the same Parish , the next day following, (unlesse they be such person or persons as he or she very well knoweth , and will answer for his or their forth comming :) nor suffer any person to remaine in his or her house tipling or drinking contrary to the law, nor yet to be there tipling or drinking after nine of the clock in the night time, nor buy or take to pawne any stolne goods, nor willingly harbour in his said house, or in his barnes, stables, or other where, any Rogues, Vagabonds, sturdy beggers, masterlesse men, or other notorious offenders whatsoever ; nor suffer any person or persons to sell or utter any Beere or Ale, or other victuall by deputation, or by colour of his or her Licence. And also, if he shall keepe the true assise and measure in his pots, bread, and otherwise, in his uttering of his Ale , Beere, and Bread ; and the same Beere and Ale to sell by sealed measure, and according to the assise, and not otherwise : and shall not utter or sell any strong Beere, or strong ale, above a peny the quart, and small beere, or small ale, above a halfe-peny the quart , and so after the same rates : and also shall not utter, nor willingly suffer to be uttered, drunk, taken, or tipled any tobacco within his said house, shop, cellar, or other place thereunto belonging , That then, &c.

3 That every Alehouse-keeper and Victualler, so to bee licenced, doe

doe enter into Recognisance with two able sureties, to be bound in 5*l.* a peece, and the principall 10*l.* at the least, for the performance of the Condition of the said Recogn. which shall endure but for one whole yeare, and then to determine, unlesse it shall seeme fit to the Justice of peace to renew the same againe, by taking a new recog. of the same condition: and whatsoever date the recog. shall have, it is to endure but untill the said monthes of Aprill and May, or one of them.

4 That the Clerks of the peace, Town-clerks, or their Deputies respectively, be called to attend the Justices of peace at such their meetings, or assemblies, and that they do there take the recog. aforesaid, of every Victualler or Alehouse-keeper licenced, and do duely enter them amongst the records of the sessions of the peace in their charge, whereby his Majestie may be duely answered of the forfeitures that shall be made of the parties so bound.

5 That the Clerkes of the peace, and Towne-clerks aforesaid, or their deputies, shall within some convenient time after the taking of the said recognisance, faire ingrosse the Recognisance and condition in parchment, which they shall keepe as the Originall, and send a true copy of the said recognisance, examined with the said originall, to every Alehouse-keeper allowed, whereby he may the better informe himselfe what he and his sureties are bound to observe.

6 That the Clerkes of the peace, and Towne-Clerkes, or their deputies, doe write out, and bring with them to every Sessions of the peace, or other meeting of the Justices, a Register booke containing the true names, surnames, and places where every Alehouse-keeper or Victualler that is licenced doth dwell, to the end it may appeare to the Justices of the peace who be licenced, and by whom, and who be not, and what other alterations have beene from time to time, for the placing of men of honest and good conversation, and displacing of others of ill behaviour.

7 That the Clerkes of the peace, and Town-clerkes and their deputies, may take of every Alehouse-keeper for their fee, for performing of the services aforesaid, at the time of the acknowledgement of the said Recogn. the fee of 18*d.* and no more, over and above the fee of xii*d.* allowed for the Justices clerkes by the statute, which shall be paid to the said Justices clerkes.

8 That in case the Alehouse-keeper, not knowing of the Justices meeting, or being hindred by sicknesse, or other such like impediment, shall faile of admittance at the generall or publike assemblies, and shall notwithstanding be admitted or licenced by two Justices of the Peace (whereof one to be of the *Quorum*) the Recognisance with condition faire ingrossed in parchment in the forme prescribed, as aforesaid, shall forthwith, or at the next Sessions at the furthest, be returned to the Clerkes of the Peace, or the Towne-clerkes, respectively under the hands of the Justices, before whom such Recognisance was taken, together also with the said fee of eightene pence for the entring, registering, making, and delivering of a copie under his hand to the Alehouse-keeper, as aforesaid.

9. That none be licenced or allowed to keepe an Alehouse that hath not one convenient lodging at least in his or their houses, for the lodging of any passenger or traveller, and to have alwayes in her or their houses good and wholesome small beer or ale, of two quarts for a penie, for the reliefe of the Labourer, Traveller, or others that call for the same.

10 That the Justices of peace within their severall Precincts, doe not permit or suffer any unlicenced Alehouse-keeper, or victualler, to sell beer or ale, but that they proceed against them by all due and lawfull meanes whatsoever; and that they be very carefull, from time to time, to cause the Brewers to be proceeded against in their generall and quarter Sessions, for delivering Beere, or Ale, to such unlicenced persons, according to the stat. in that case provided.

11 That the Clerks of the Peace, or town-clerks respectively, do once every yeare, in *Trinitie* Terme, make and bring in a Brieve of all such Recognisances as shall be taken within every County, City, and Towne corporate, into the office of the Patentees, (appointed by them for that purpose) to the end all concealments of Recog. taken in that beha^l may be discovered; and the benefit accruing unto his Majestie, by such as wilfully break the same, may be more duely prosecuted: of which, that his Highnesse be not defrauded, order is given to the Patentees, that with the allowance of the chiefe Justice of the Kings Bench, there be appointed Committees in every Countie, for the Recoverie thereof from time to time.

12 That the Justices of Assise in their Circuits, and Justices of Peace at their generall Sessions of the peace, doe from time to time enquire of the due execution of these presents, and of all other abuses, disorders, and misdemeanors whatsoever, committed, or suffered, against the provisions aforesaid, and the true meaning of them.

A License to keepe an Alehouse CAP. 124.

canabr.

John Cotton Knight, and Michael Dalton Esquire, two Justices of the P. of our Sovereigne Lord the Kings Majestie, in his Highnesse Countie of C. send greeting in our Lord God everlasting. Know ye, that we the said Justices, of good and credible report to us made, by divers credible and honest persons, &c. that I. W. of, &c. is a man meet to keep a common Alehouse in the house where he now dwelleth, have licenced, allowed, and admitted, and by these presents doe licence, allow, and admit the said I. W. to keep a common Alehouse or tipling house at L. for one whole yeer next ensuing the date hereof, so that the said I. W. suffer not any unlawful games to be used in his said house, nor any evill rule or order to be kept within the same, during the time of his said Licence: for the using of which Licence accordingly, we doe you to wit, that we have bound the said I. W. in x. li. and two other sufficient sureties, in an hundred shillings apeece by Recognisance to the Kings Majesties use. In witnesse whereof, we have hereunto set our hands and seales. Dated, &c.

Or

Or thus.

I.C. and M.D. two Justices of the peace of our Sovereigne Lord, &c. To all Bailiffes, Constables, and other the Kings Majesties officers, greeting: Know ye, that we the said Justices have licenced, and by these presents doe licence I. W. of, &c. to keepe a common Alehouse in L. aforesaid, for one whole yeare next ensuing the date hereof: and have bound the said I. W. by Recognifance with sureties to the Kings Majesties use, that he shall maintaine good rule: and further to do and behave himselfe therein, in all things according to the Lawes and Statutes of this Realme, &c.

Or thus.

WE whose names are hereunder written, Just. of the P. of our Sovereigne Lord the King, within the County of Camb.^{Canabr.} do licence and allow I.W. of L. in the said County, to keepe a common Alehouse or tipling house in L. aforesaid, for and during one whole yeere next ensuing the date hereof, so as he doth not suffer any unlawfull games to be used in his house, nor any evill rule to be kept there, but doe behave himselfe therein according to the Lawes and Statutes of this Realme in that behalfe made and provided. In witness, &c.

A Licence to Brew, and keepe an Alehouse.

Well. 554.

WHereas A.M. of W. in the County of D. Husbandman, hath come before us, *John Cutts* Knight, and *Fr. Brakin* Esquire, two of the K. Majesties Just. of P. within the said County, and bound himselfe in a Recog. with sufficient sureties, to brew and sell, and keepe a common Alehouse, according to the stat. made in the fifth yeare of the reigne of our late Sovereigne Lord K. Ed. 6. Now know ye, us the said *John Cutts* and *Fr. Brakin*, to have licenced the said A.M. to brew, to sell, and to keepe a common Alehouse, according to the said Statute. Given under our hands, the 13. of July, in the, &c.

A Licence for a Recusant to travell, &c.

WHereas R. C. of L. in the County of C. being a Recusant^{Canabr.} (convicted) hath confined himselfe to L. aforesaid, being the usuall place of his aboad, according to the statute made in the 35. year of the reign of our late Sovereign Lady Queen *Elizabeth*: Know ye, that we, &c. foure of the Kings Majesties Justices of peace within the said Countie, doe by the consent of the right reverend Father in God *Nicholas* by Gods providence Lord Bishop of Ely, at the request of the said R. C. for the dispatch of his urgent and necessary businesse, grant and give licence to the said R. C. to travell out of the precincts or compasse of five miles limited by the said statute, at all times, untill the first day of Novem. next

next comming, and at the said first day of Nov. to returne againe to L. aforefaid. In witnesse, &c. See *hic antea, tit. Recusantis.*

A Testimoniall or Passport to travell.

Canabr.

Sir Roger Millisent Knight, and Sir James Reynolds Knight, two of the Kings Majesties Just. of P. within the said Countie, to all Just. of P. Mayors, Bailiffes, Constables, and all other his Majesties officers and Ministers whatsoever, send greeting in our Lord God everlasting. Forasmuch as the bearer hereof E.P. (*here shew the cause of his travell*) hath desired our Testimoniall (or Licence) for his safe travell unto the Citie of B. where (*here shew whither he is to goe.*) In consideration whereof, know ye, we the said Sir Roger Millisent, and Sir James Reynolds, so far as in us lieth, have licenced the said E.P. to travell and passe the direct way from H. within the said Countie of C. whereas he lately dwelled, unto the said Citie of B. so as his journey be not of longer or further continuance than twenty dayes next after the date hereof, praying you, and every of you, not to molest or trouble the said poore man in his travell, but to permit and suffer him peaceably to passe, so as he shew himselfe in no respect offensive to his Majesties lawes. In witnesse, &c.

But upon such licence, the persons thus licenced to travell, may neither beg, nor wander idly, nor out of their direct way. Besides, the Justices must be sparing to grant such licences, except in cases of necessity. For except the person so licensed be one that hath suffered shipwracke, or a Souldier, or Mariner comming from the Seas, &c. *hic cap. 47.* or be a Labourer, and onely for hay and harvest time; or else be a servant departing from his Master, *hic cap. 36.* the Justices of peace are to make no such licence, or Testimoniall (as it seemeth:) And as for the manner of such testimoniall or licence for persons suffering shipwracke, and Souldiers comming from Sea, and in what manner such persons may travell, see *hic antea, tit. Rogues, cap. 47.*

But in other cases where any person shall become poor, lame, blind, or otherwise diseased, or decayed, and shall have just cause to travell, they must be provided of money or maintenance for their travell, otherwise the Justices ought to forbear to grant any such licence, and must rather cause them to be sent to, and settled in, the towne where they last dwelt.

Also it is fit that such persons doe get the allowance of such his Passport under the hand of some one Justice of peace, in every Countie where he is to passe.

The forme of a Testimoniall for the conveying of a Rogue that hath beene punished according to the Stat. of 39. El. c. 4.

Canabr.

John at Stile, a sturdy vagrant beggar, (of low personage, red haired, and having the naile of his right thumbe cloven) aged about yeares, was this sixt day of Aprill, in the x. yeare of the reigne of our Sovereigne Lord King Charles, of England, &c. openly whipped at W. in the said County, (according to the Law) for a wandring rogue, and is assigned

assigned to passe forthwith from parish to parish by the officers thereof, the next straight way to P. in the Countie of W. where (as he confesseth) he was borne, (or dwelled last by one whole yeare, &c. if the case be such) and he is limited to be at P. afore said, within ten dayes now next ensuing, at his perill. Given at Westwratting, under the hand and seale of M. D. Esquire, one of his Majesties Justices of peace in the said countie of Cambridge.

Note by the words of the Statute 39. El. 4. such testimoniall must be under the hand and seale of the Just. of peace, Constable, headborough, and of the Minister of the parish, or of any two of them; and yet it is taken that the Justice of peace alone under his hand and seale may make such testimoniall. *Lamb. 206.*

Note also, that it is needfull both in this and in all other Testimonials, Certificates, Safe-conducts, and Passports whatsoever, to note and specifie expressly some assured marks of the party, as his stature, colour of hair, complexion, or (if it may be) some apparent scarre, or other note, by which he may be infallibly distinguished and knowne from others; lest (as is often found) both himselfe take the benefit thereof, and he also communicate the use of the same to others, in abuse of him that made it, and of the Law in that behalfe provided.

A Testimoniall for such as have suffered Shipwracke.

A. B. of C. in the Countie of Norff. Esquire, one of the Kings Majesties Justices, &c. To all, &c. Forasmuch as the bearer hereof I. S. aged about, &c. having lately bene at sea, in a ship called, &c. and hath suffered shipwracke, and got to land at Y. in the said countie of Norff. upon the day of last past (as I am credibly informed, as well by the report of the said I. S. as also by the testimonie of divers the inhabitants of Y. afore said) and for that the said I. S. hath not wherewith to relieve himselfe in his travell homewards to D. in the countie of H. where he saith he was born (or hath a dwelling, &c.) These are therefore to pray you, and every of you to whom these presents shall come, not to molest or trouble the said I. S. in his travell to D. afore said, where he is limited to be within dayes next after the date hereof; but desiring you rather to relieve him in his necessity, as to you shall seem meet: and withall, you the Constables of every Towne where he shall come, to helpe him with lodging in convenient time, so that he travelleth the direct way to D. afore said, not doing any thing contrary to the lawes and statutes of this Realme. In witnesse whereof, &c.

Norff.

*Mariner or
Souldier.*

The like (with very little alteration) may be made for a poore Mariner, or a poore Souldier, comming from the seas, or from beyond the sea. *Vide antea, tit. Rogues.*

But these two last Testimonials must be made by some Justice of peace dwelling neere where such persons do land.

CAP. 125.

Warrant' custodi Gaolæ, ad recipiend' prisonarium pro feloniam.

Constab.

EDwardus Peyton Miles & Baroneus, unus Justiciar' Domini regis nunt ad pac' in com' præd' conservand' necnon ad diversa felon' transgr' & alia malefact' in eodem com' audiend' & terminand' assig' custod' Gaolæ disti' domini regis in com' præd' aut ejus locum tenenti, & eor' cuilibet, salutem. Quia R.T. nuper de I. in com' præd' Laborer, jam pro suspicionem cujusdam feloniam per ipsum (ut dicitur) perpetrat' per Constabul' villa de R. in com' præd' arrestat' : Ideo ex parte disti dom' regis vobis & cuilibet vestrum precipio, quod ipsum R. in custod' vestram recipiatis, seu unus vestrum recipiat, ibidem moratur' quousque secundum legem & consuetudinem regni Angliæ a custod' vestra deliberetur. Dat' apud Isleham, &c.

Alias.

EDw. P. &c. to the keeper of the Kings Majesties Gaole at the Castle of Cambridge, or to his deputie there, greeting: These are in his Majesties name to charge and command you, that you receive into your said gaole the body of R. S. late of, &c. taken by F. C. and I. S. Constables of the Towne of W. and by them brought before me for suspicion of felony, &c. and that you safely keep the said R. S. in your said Gaole, untill the next generall gaole deliverie for the said County, if he be notailable: Or if he beailable, then thus, untill he shalbe thence delivered by due order of his Majesties Lawes. And hereof faile you not, &c.

A Mittimus of a felon, after his examination taken.

Constab.

John Cotton knight, one of the Just. &c. To the Keeper of his Majesties gaole at the Castle of Cambridge in the said County, &c. Greeting. I send you herewithall the Body of A. B. late of C. Laborer, brought before me this present day, and charged with the felonious taking of twenty sheep, (which also he hath * confessed upon his examination before me) and therefore these are (on the behalfe of our said Sovereign Lord) to command you, that immediately you receive the said A. B. and him safely keep in your said Gaole, untill that he shall be thence delivered by the due order of his Majesties Lawes. Hereof faile you not, as you will answer for your contempt at your own peril. Given at Chevely, the day of in the year of the reigne of our said Sovereigne Lord Charles, by the grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith, &c.

* But this clause maketh the prisoner not to beailable.

Alias.

Or these Warrants or Mittimus, whereby a prisoner shall be sent to the Gaole, may be made in the Kings name, and the *Teste* may be under the name of the Justice of peace, as followeth.

Carolus

Carolus Dei grati Rex Anglⁱ, &c. Custⁱ Gaole nostræ de Cantabⁱ vel ejus locum tenenti saluti. Quia R. S. super de B. in Comⁱ Essex laborer, jam pro suspacⁱ cujusdam felonie per ipsum ut dicitur perpetrati arrestⁱ. Ideo vobis & cuilibet vestrⁱ præcipimus qdⁱ ipsum R. in custodⁱ vestram Gaole nostræ pradiⁱ recipiat, seu unum vestrum recipiat ibidem moraturⁱ quousque secundum legem regni nostri Angliæ à custodia vestra deliberetur. Teste Edm. P. &c.

*A Mutimus to send to the gaole an Alehouse-keeper that viſual-
leth contrary to commandement, &c.*

Henry Vernon, and Roger Thornton Esquires, two of the Kings Ma-^{Canab.} jesties Just. of the peace within the said County of Cambridge, To the Keeper of the Kings Majesties Gaole at C. Greeting. Whereas R. D. of B. in the said County of Cambridge (upon complaint lately made unto us of the evill rule kept and suffered by him in his house, and other misdemeanors) by warrant under both our hands and seales was discharged of his Alehouse-keeping, and was commanded from us that he should thenceforth use no more common selling of Ale or Beere: And whereas we are credibly informed that the said R. D. (notwithstanding our said Warrant and commandement given him to the contrary, as afore-^{* Or, to use commonly selling of ale or beere.} said) hath ever since obstinately, and upon his owne authority, taken upon him to * keepe a common Alehouse or tripling house, and still continueth the same: We doe therefore send you herewithall the body of him the said R. D. commanding you in his said Majesties name to receive him into your said Gaole, and there safely to keep him, untill such time as he shalbe from thence delivered by due order of Law. And hereof faile you not at your perils. Dated at the day of in the yeare of, &c.

Or thus.

Whereas by warrant or commandement. from divers Just. of P. of this Countie, I. S. of, &c. hath been suppressed for keeping an Alehouse, &c. And forasmuch as complaint hath notwithstanding been made to us (this present day) that the said I. S. hath and doth, contrary to the said commandement, and contrary to the statute in that behalfe provided, still keepe a common Alehouse, Therefore wee doe send you herewithall the body of the said I. S. commanding you, &c. to receive the said I. S. into his Majesties Gaole, and there safely to keepe him for three dayes without baile or mainprise; and afterwards untill hee shall with two sureties enter into Recognisance, that he shall not keep any common Alehouse, or use common selling of Ale or Beere, and pay his fine of xx.s. according to the statute in that case made and provided. Hereof faile you not, &c.

*A Mittimus (to the Gaole) of the reputed father of a
Bastard child, &c.*

Canabr.

I Send you herewithall the body of R. C. of B. in the county of C. Labourer, brought before me this present day, and charged by F. S. of the same Towne to have gotten her with childe; and for that the said R. refuseth to put in security for his appearance at the next quarter Sessions, and to the end he may be forthcomming when as order shall be taken for the reliefe and discharging of the said towne of B. and for the keeping of the said child (when it shall happen to be borne) according to the statute in that case provided: These are therefore on the Kings Majesties behalfe to charge and command you, that immediately you receive the said R. C. and him safely to keepe in your said gaole, untill such time as he shall be from thence delivered by due order of law. And hereof faile you not as you will answer your contempt at you perill. Dated, &c.

In every Mittimus, the cause of the commitment is to bee set downe; to the end it may appeare whether the prisoner bee baileable or no. See hereof before in the title *Bailement*.

Also where the Justices of Peace out of their Sessions may heare and determine, and so may commit offenders for the offence or fine, it is necessary that in their Mittimus there be contained the manner of the offence, and how long time the offender is to be kept in prison for it. See the Mittimus for guns afterwards.

*A Mittimus, to the house of Correction, of a
dangerous Rogue.*

Canabr.

Or such
rogue may
be sent to
the Gaole.
See before
tit. Rogues.

Iohn Richardson Doctor of Divinity, and Michael Dalton Esquire, two of the Kings Majesties Justices of the peace within the said County of Cambridge. To the Master or Governour of the house of Correction at Bottisham (for the East side of the said county) or to his deputy there, Greeting: Whereas I. S. a sturdy vagrant beggar, was this day of September, *anno domini* brought before us, and charged aswell with begging and idle wandring abroad, as also with other lewd and disorderly behaviour, so as he appeareth to us to bee dangerous to the inferiour sort of people (or such a one as will not be reformed of his roguish life) contrary to his Majesties Lawes in such behalfe provided: These are therefore to will and require you, to receive the said I. S. and him safely keepe in your said house, untill the next quarter Sessions to be holden in the said County: And during all that time (that hee shall so continue with you) that you hold him to worke and labour, and to punish him by putting Fetters or Gyves upon him, and by moderate whipping him, as in good discretion you shall find cause, yeelding him for his maintenance onely so much as he shall deserve or earne by his labour and work. And that at the said next quarter Sessions you have the said I. S. there, together with this our warrant, And hereof see that you faile not, &c. Dated, &c.

See stat.
Jac. 4. c.
11. s. 4.

*A Mittimus to the house of Correction of a disorderly servant,
or other disorderly person.*

I Have sent you herewithall the body of E. C. of W. in the said coun-^{Cambr.} tie of C. being an idle, dissolute, and disordered fellow: (or one that will not keep his service, nor follow any honest course of life) These are therefore to will and require you to receive the said E. C. and him safely to keep (* untill that hee shall bee thence delivered by warrant from my selfe, or some other his Majesties Justices of peace, for this country of Cambridge) and in the meane time to hold him to worke, and to punish him by moderate whipping, and otherwise according to the law in such cases provided. And hereof see that you faile not, at your perill. Dated, &c. See the stat. 7 Jac. cap. 4.

* Or, by the space of three daies next after the date of this Warrant.

Another for one that runneth away, leaving her charge to the towne.

W Ee have sent you herewithall the body of I. R. of W. single woman, being lately delivered of a child, and one that is able to labour, and thereby to relieve her selfe, and her said child, and hath notwithstanding lately runne her way, and left her childe upon the parish, to the charge of the same parish, contrary to the stat. in that behalfe provided: These are therefore to will and require you to receive the said I. R. and her safely to keepe, untill the next quarter * Sessions to bee holden for this county; and in the meane time to hold her to such works, and to give her such due correction, by moderate whipping, or otherwise, as shall bee fitting in your discretion, and according to the Law in that behalfe provided, yeelding her for her maintenance, &c. ^{ut supra.} And hereof see that you faile not at your perill. Dated, &c. See the

7 Jac. cap. 4. statute. 7. Jac. cap. 4. & vide antea tit. Rogues, bis.

* Or else such party must be delivered at the meeting of the Just. upon privie search made for Rogues, & not otherwise.

Note, if any meane person shall but threaten to ruine away, and leave their family (as aforesaid) any two Justices of Peace of that division, may send them to the house of correction, as aforesaid; but such their threatening must be proved by two sufficient witnesses upon oath, before the said Justices of peace. *Vide antea tit. Rogues.*

A Mittimus to the house of Correction of the Mother of a Bastard child.

W Ee have sent you herewithall the body of I. C. of W. in the said county, single woman, being lately delivered of a Bastard child, likely to bee chargeable to the Parish of W. aforesaid; and for that the said I. C. is able to labour, and that thereby shee may the better relieve her self & her said child, These are therefore to will and require you to receive the said I. into your said house, there to be punished, and set on worke during the terme of one whole yeere, according to the statute in that behalfe provided. And hereof faile you not, &c.

Rogues, vagabonds, sturdy beggars, and other idle, and disorderly persons sent to the house of correction, are there to bee punished by putting fetters or gyves upon them, and by moderate whipping. 7 Jac. cap. 4.

So persons running, or threatening to run away, and leave their family to the parish, *ibid.*

The mother of a Bastard child, &c. shall be set on work, & punished, *ib.*

But where by the plaine letter of the law, there is not authority given to whip or punish offenders (sent to the house of correction) there let the Justices of peace forbear to appoint or order any whipping, except it be in open Sessions, or by order of the Quarter Sessions.

Note, that the greater part of the Justices of peace assembled at the quarter sessions, may set downe orders for the correction and punishment of Offenders, committed to the house of correction.

And the houses of Correction are to be used and employed for the keeping, correcting, and setting to worke of such persons as shall be sent thither. See *stat. 7. Jac. cap. 4.*

What manner of persons are to be sent to the house of correction, See *stat. 7. Jac. cap. 4. & his cap. 11. 17. 31. 40. 47. 57.*

A Mittimus to send to the gaole such as shoot, &c. in Guns. CAP. 126.

To the Keeper of his Majesties Gaole at the Castle of Cambridge, and to his deputy or deputies there, and to every of them.

Canaby.

FOrasmuch as this present day A.B. and C.D. of in the same county Yeomen, did arrest and bring before mee at (aforesaid) one I. at S. in the said county Mariner, *Lamb. 391.* whom they had seene, and found the same day (as they said) shooting in a hand-gunne (charged with powder and a pellet) at a Connie in a certaine place in C. within the said County, called the Church-field, contrary to the law of this Realme, and thereupon prayed mee that justice might bee done in that behalfe: I *John Cutts* Knight, being the next Justice of the peace in the said county to the place aforesaid, did then at aforesaid, upon the said request, take the examination of the said I. at S. and did also then and there heare the proofes of them the said A.B. and C.D. touching the said offence, and for that it did then manifestly appeare unto mee, as well by the testimonies of them the said A.B. and C.D. as also by the plaine confession of him the said I. at S. that he had not then Lands, tenements, fees, annuities, or offices to the cleare value of one hundred pounds, and that hee had shot in the said Hand gun, in manner and forme as is aforesaid: I doe send you herewithall the body of him the said I. at S. as lawfully convicted of the said offence before mee: requiring you in his Majesties name to receive him into your said Gaole, and him there safely to keepe (as his Majesties prisoner) untill that hee shall have truly paid the paine and forfeiture of x.l. of lawfull money of England, laid upon him for his said offence, by the statute thereof made in the three and thirtieth yeere of the Reigne of the late King *Henry* the eighth; that is to say, the one moiety thereof to our said Sovereigne Lord; and the other moiety to them the said A. B. and C. D. the first bringers of him before me. And this shalbe your sufficient warrant in this behalfe. Hereof faile you not

as you will answer for your contempt at your owne perill: Yeoven at
aforesaid, the twentieth day of March, in the year of the reigne
of our said Sovereigne Lord Charles, by the grace of God, King of Eng-
land, Scotland, France and Ireland, &c. Defender of the Faith, &c.

By me the said John Cutts:

The Justices Record thereof.

Memorand. quod vicesimo die Martii anno regni Domini nostri Ca-
roli, Dei gratia, Ang', Scotia, Francie, et Hibernie regis, fidei de-
fensor, &c. A. B. et C. D. de in com' prad. Yeomen, Quen-
dam I. at Side in dicto com' Mariner invener. et viderunt apud
in com' prad. die et anno supradict' cum quodam tormento (Anglice vo-
cat' a hand-gun) onerato pulvere tormentario, et globo plumbeo (Anglice char-
ged with gun-powder and a leaden bullet) in quendam cuniculum adsunc ex-
sistent' in quodam loco ibidem vocato Church-field sagittante, et exonerantem
dictum torment' contra formam stat' (in Parliamēt' domini Henr. nuper re-
gis Angliæ octavi, apud Westmns' anno regni sui tricesimo tertio teni') pro-
visi ac editi: Ac proinde die & anno supradict' prefat' I. at S. arresterunt;
& apud prad. coram me Johanne Cutts milite, uno, et dicto loco
proximo Justic' dicti domini regis ad pacem in dicto com' conservand. (Nec-
non ad diversas transgress. & alia malefacta in eodem com' perpetrata audi-
end. et terminand.) assignator': ad tunc una secum adduxerunt, petentes inde
justitiam fieri. Qua quidem petitione audita, ego prefatus Johannes Cutts a-
puđ prad. die et anno suprad. debite superinde examinavi pref.
I. at S. ac probationes prad. A. B. et C. D. in hac parte cepi; ac propterea quod
tam per probationes pradict' quam per confessionem ipsius I. at S. ad tunc et ib.
apparuit mihi manifeste quod pref. I. at S. (cum non haberet in jure suo proprio)
nec in jure uxoris sue ad usum suum proprium, nec aliqui alii ad usum ejusdem
I. at S. haberent terras, tenementa, feoda, annuitates, aut officia, ad clarum
annuum valorem centum librarum) in tormento pradicto modo et forma pre-
dictis sagittasset contra formam statuti pradicti, Ego prefatus Johan. Cutts
prænominat' I. at S. die et anno supradict' proxima Gaole dicti domini re-
gis apud Cantabr' in com' prad. (de transgress. pradict' coram me convictum)
commisi, ibidem moraturum quousque penam et forisfacturam decem librar'
legalis monet' Ang' vere solveris, viz. unam medietatem inde dic' dom' regis, &
alteram medietat inde dic' A. B. et C. D. primis ejusd. I. at S. coram me dicto-
ribus. In quor' omnium fidem et testim' ego pref. Jo. Cutts, his presentibus si-
gil' meum apposui, Dat' apud prad' die et anno primum supradictis.
Per me pref. Johannem Cutts.

Bailement. CAP. 127.

Memorand. quod secundo die mensis Septembris anno regni dom' nostri Car-
oli, &c. venerunt coram nobis Johanne Cage milite, et Rober-
to Castle armig' duobus Justic' dicti domini regis ad pacem in com'
prad. conservandam assignat' (apud H. in com' prad.) A. B. et C. D. de E. in
dicto comit' Yeomen, et ceperunt in ballivum, usque ad proximam gaole deli-
berationem in dicto comitat' tenend. quendam F. G. &c. Laborer, captum &
detentum

detentum in prifona pro fufpicionē cujufdam felonie, &c. Et affumpfer' fuper fe, fc. quilibet pred' A.B. & C.D. fub pœna viginti libr' bone & legal' monete Angl'. Et præd. F.G. affumpfit pro feipfo fub pœna 40. libr' fimilis monete de bonis & catallis, terris & tenement' eor' quorumlibet, & cujuflibet eor. ad opus dicti dom' regis, heredum & fuffefforum fuor' levandar' fi præfat. F.G. ad eandem proximam gaolē deliberat' perfonaliter non comparabit coram Jufticiariis dicti dom. regis, ad dictam gaolē deliberand' assignatis, ad ftandum recte de felonie præd. & ad respond. dicti dom' regi tunc & ibid. de & fuper omnibus quæ illi objiciuntur. Dat' fub figill. noftro, die & anno primum fupradictis. Vid. antea in. Bailement.

Alias: (fc. if the Gaoler can conveniently bring the prifoner before the Juftices.)

Memorand', qd. die Augufti, &c. A.B. de C. &c. & E.F. de G. &c. venerunt coram nobis M.D. & I.B. armig' duobus Juft' &c. & manucep' pro I.S. de &c. uerq; eorum fub pœna xx. li. & præd. I.S. tunc & ibidem fimiliter affumpfit pro feipfo fub pœna 40. li. confimilis monete Ang. de bonis & catallis, terris & tenement' eorum & cujuflibet eor' ad opus & ufum dicti dom' reg' hered. & fuffeff. fuorum fieri & levari fi præfat' I.S. defecerit in condicione indorfat'.

THe condition of this recognifance is fuch, that if the within bounden I.S. fhall make his perfonall appearance before the K. Majefties Juftices of peace at the next generall Sefſions to be holden for this County, then and there to make answer to our Sovereign Lord the King, for and concerning the fufpicion of ſtealing certaine corne, wherewithall he ſtandeth charged, That then, &c.

Alias.

Memorandum quod die, &c. venerunt coram nobis, &c. Crom. 155. 21 H. 7. 20. Br. Man. 44.
A.B. de &c. & C.D. de &c. et E.F. de &c. et manucep' pro R.B. de L. in comitat' prædict' gener', viz. quilibet eorum corpus pro corpore, quod idem R.B. perfonaliter comparabit coram præfat' Juftic' & ſociis ſuis Juftic' dom' regis ad proximam generalem ſeſſionem pacis in comitat' prædict' tenend. ad ftand. recte in cur': (ſi quis verſus eum loqui voluerit) de diverſis felonis et traſgr', unde idem R.B. indiſtatus exiſtit (ut dicitur) et ad respond. dicto dom' regi de eiſdem prout debet, &c. Vid. antea in. Bailement, that it muſt be upon a certaine ſumme of money.

Yet note, upon his laſt manner of Bailement, the mainpernours ſhall be onely fined, if the Priſoner maketh default. 21 H. 7. 20. Crom. 155. Br. Man. 44.

Before the ſtatute of Marl. cap. 27. if one arreſted, or in priſon for felony, had beene bailed, and at the day the priſoner would not answer, but he took himſelfe to his Clergy, &c. then his mainpernours were amerced, &c. But now by that ſtatute, if they have the body at the day, they ſhall not be amerced, although the priſoner will not answer, &c. Neither ſhall they forfeit their Recognifance, if they have the body of the Priſoner there, although the Priſoner will not answer, &c. and yet the words of the recognifance or bailement are uſually, *Ad respond. dicto dom' regi, &c. ut ſupra.* But theſe words ſeeme to be of courſe.

Alias

Alias, to baile a prisoner for the peace.

Memorandum, &c. A.B. de &c. C. D. de &c. & E. F. de &c. venerunt coram me M. D. &c. & manuceperunt pro R. B. de &c. quod ipse pacem geret erga cunctum populum domini regis, & precipue erga I. S. sub pena cuiuslibet manucaptor' xx. li. & prædict' R. B. sub pena 40. li. & qd' prædict' R. B. comparabit coram Justic' domini Regis ad proximam generalem sessionem pacis pro com' prædict' tenend', &c.

The Liberate to deliver a Prisoner committed for felony.

Edward Hinde Knight, and Edward Aldred Esquire, two of the Justices, &c. To the Keeper of his Majesties gaole in &c. Greecing. Forasmuch as F. G. &c. Laborer, hath before us found sufficient mainprise to appeare before the Justices of the gaole delivery, at the next generall gaole delivery to be holden in the said country, there to answer to such things as shall be then, on the behalfe of our said Sovereigne Lord objected against him, and namely, to the felonious taking of two sheepe (for the suspicion whereof he was taken and committed to your said gaole) we command you on the behalfe of our said Sovereigne Lord, that (if the said F. G. doe remaine in your said gaole for the said cause, and for none other) then you forbear to grieve or detaine him any longer, but that you deliver him thence, and suffer him to goe at large, and that upon the paine that will fall thereon. Given under our seales, this, &c.

Warrant' ad liberand' servientem extra Gaolam.

Franciscus Brakin armig' unus Justic' &c. custodi gaole dicti dom. regis in com' præd' salutem. Quia W. C. de N. Laborer, coram me inveniit sufficient' securitas' essendi coram Justic' dicti dom' regis ad pacem in com' præd' conservand'. &c. ad proximam generalem sessionem pacis in com' præd' tenend'. ad respondend' tam dicto dom' regi, quam C. D. de &c. de transgress. & contemptu suis, contra formam statuti de servientibus nuper editi. & provis. Ideo tibi ex parte dicti dom' regis mando qd' præd' W. C. a prisona tua, si ea occasione & non alia ibid' detineas' sine dilatione delib' fac. Dai' &c.

Wherefoever a Justice of peace, upon his own motion and discretion, hath committed one to the gaole, or house of correction, for (want of sureties for) the peace, or good behaviour; or for being a vagrant, or idle person, or the like, it seemeth the same Justice of peace may in like discretion, afterwards discharge him againe, and make his Liberate or warrant to deliver such prisoner. See 14. H. 6. fo. 8. Br. impris. 27.

To deliver a Prisoner committed for the peace, or good behaviour.

F. B. armig. unus Justic' &c. vic' (scu custodi Gaole) &c. Quia I. S. in prisona dom' regis in custod' tua existit' ad secta' cuiusd'. A. S. de se bene gerend', vel pro pace gerend' erga dom' regem & cunctum populum suum (& precipue erga prædict' A. S.) inveniit coram me suffic' secur. (vel quatuor manuceptores, scilicet, A. B. C. D. E. F. & G. H. &c. qui manucep' pro

pradiſt I.S. quod ipſe I.S. non inferret, nec inferri procurabit per ſe, nec per alios eidem A.S. ſeu alicui de populo dicti domini regis aliquod dampnum ſeu gravamen de corpore ſuo per minas, inſidias, inſultum, ſeu aliquo alio modo, quod in leſionem ſeu perturbat pacis domini Regis cedere valeat quovifmodo, viz. quilibet eorum manucaptor ſub pena xx. li. Ideo ex parte dicti domini Regis tibi mando quod pradiſt I.S. in priſona domini Regis in cuſtodia tua ea occaſione & non alia exiſtens indilate delib' fac' Dat' &c.

Releases of the peace. CAP. 128.

The Release of the Juſtice of Peace.

E Go praſa. H. Martin, qui ſupra nominatum A.B. ad praed' ſecuritatem pacis inveniend' : ex mea diſcretionem compuli, eandem ſecuritat' pacis (quantum in me eſt) ex mea diſcretionem, 1 die Aug. &c. remiſi & relaxavi. In cuius rei teſtimon' huic praſenti relaxationi mea ſigillum meum appoſui, dat. die & anno ſupradictis.

The Release of the party (before the ſame Juſtice that tooke it.)

M Emorand. quod primo die Aug. &c. praſat. C.D. venit coram me Roger Thorneton, & gratis remiſi & relaxavi (quantum in ſe eſt) pradiſt. ſecuritatem pacis, per ipſum coram me, verſus ſupra nominatum A.B. petitam. In cuius rei teſtimon' ego praſat. Roger. Thornton Sigillum meum appoſui, dat. &c.

Theſe two former releases are to be written under the Recogniſance it ſelfe : and if the Juſtice ſhall only ſubſcribe his name to the releaſe, without his ſeale, it is well enough: (eſpecially where the Recog. is without ſeale.)

Or the releaſe of the party may be by it ſelfe in this forme, ſcil.

Canabr. **M** Emorand. qd. C.D. de S. in com. praed. Yeoman, primo die Auguſti, anno regni dom. noſtri &c. venit coram me Iſaac Baro armig. uno Juſtic. dicti dom. Regis ad pacem in com. praed. conſervand. aſſign. apud W. in com. praed. & ib. remiſi, & gratis relaxavi R.W. de S. in com. praed. Labourer, ſecuritatem pacis per ipſum C.D. verſus dictum R.W. coram me petitam. Dat. die & anno ſupradictis.

And if the releaſe be made before another Juſtice which tooke not, or hath not the Recogniſance, it may be thus.

Canabr. **M** Emorand. qd' A.B. de C. in com. praed. Yeoman, primo die Auguſti, &c. venit coram me Rob. Hagar armig' uno Juſtic. dicti Dom. regis ad pacem in com. praed. conſervand. aſſig. (apud W. in com. praed.) & ſecuritatem pacis quam habet verſus I.S. de &c. panitus remiſi & relaxavi. Dat. die & anno ſupradictis.

But note that none of theſe releases will diſcharge the Recog. or the appearance of the party bound thereby, but that hee muſt appeare according to

to the condition of the Recog. for the safeguard of his Recog. See *hic* c. 71.

Release for the good abearing.

Lamb. 126.
P. R. 22.

Mr. Lambert seemeth to doubt whether the Surety of the good abearing may be released by the party (because it seemeth more popular than the surety of the peace :) But others doe hold that it may be released; and then may the forms of such release be easily made by those which are before concerning the peace, using the words *Securitas de se bene gerendo*, in stead of the words *Securitas pacis*. But notwithstanding such release, it shall be safe also for the party bound, to appeare according to the Recognisance.

Indentures for Apprentices.

THis Indenture made the day of, &c. witnesseth, that *A. B. C. D.* and *E. F.* Overseers for the poore in the towne of *H.* in the county of *C.* and *I. S.* Churchwarden of the same town, by and with the consent of *Sr. I. M.* Knight, and *M. D.* Esquire, two of his Majesties Justices of peace for the county of Cambridge, have by these presents, put, placed, and bound *I. H.* (being a poore fatherlesse and motherlesse child) as an Apprentice with *R. W.* of *H.* aforesaid Baker, &c. And as an apprentice with him the said *R. W.* to dwell from the day of the date of these presents, untill the said *I. H.* shall come to be of the age of 24. yeeres, (if it bee a woman, then untill her age of 21. yeeres, or the time of her marriage) according to the statute in that behalfe provided. By and during all which time and terme, the said *I. H.* shall the said *R. W.* his Master well and faithfully serve in all such lawfull businesse as the said *I. H.* shall be put unto, according to his power, wit, and ability, and honestly and obediently in all things shall behave himselfe towards his said Master, his Wife and Children, and orderly and honestly towards all the rest of the family of the said *R. W.* And the said *R. W.* for his part promisseth, &c. the said *I. H.* in the craft, mystery, and occupation the which he useth, after the best manner that he can or may, shall teach and informe, or cause to be taught and informed, as much as thereunto belongeth, or in any wise appertaineth. And also during all the said terme to find unto his said Apprentice, Meat, Drinke, Linnen, Woollen, Hose, Shooes, and all other things needfull or meet for an Apprentice, &c. In witness whereof, &c.

Forcible Entry. CAP. 129.

The forme of the Record (of a forcible Entry) by the Justice upon his view.

Memorandum qd. die mensis Januarii. Anno regni Dom. Caroli nostri Caroli, Sec. Quisus est mihi Johanni Cottoni Militi, uno Justiciar. dicti domini Regis ad pacem in dicto Comitatu conservand.

conservand. assignat'. Quidam A.B. de W. in dicto comitatu, Yeoman, qd' C.D. de W. pradiet. & nonnulli alii pacis dicti domini regis perturbatores ignoti, in domum mansionalem ipsius A.B. in W. pradiet' manusforti ingressi sunt & ipsum A.B. disseisiverunt, ac eadem manusforti & armata potentia adhuc tenent: ac proinde petitis a me sibi in hac parte remedium apponi: Qua quidem querimonia & petitione audita, Ego prafatus Johan. Cotton, immediate ad dictam domum mansionalem personaliter accessi, ac in eadem domo adtunc inveni prafatum C.D. & quosdam E.F. & G.H. &c. domum illam vi & armis, manusforti, & armata potentia (viz. arcubus & sagittis, gladiis, pugionibus, galeis & loriciis) tenentes, contra formam statuti in Parlamento Domini Richardi, nuper regis Anglia, secundi, anno regni sui decimo quinto tento, provisum, & contra formam diversorum aliorum statutorum. Ac propter ea ego praf. Johan. Cotton pradietos C.D. E.F. & G.H. adtunc & ibidem arrestavi, proximaq; gaola dicti dom. regis apud castrum Cantabr. in dicto comitatu duci feci, ut de dicta manusforti tentione, per visum & recordum meum convictos, ibidem morantur' quousque fines dicto dom. regi pro transgress. suis pradietis fecerint. Dat' apud W. pradiet' sub sigillo meo, die & anno supradictis.

The forme of the Mittimus (to the Gaole) of such as hold Land by force.

Cantabr.

John Cotton Knight, one of the Justices of the peace of our Sovereigne Lord the Kings Majesty, within his said county of Cambridge, to the Keeper of his Majesties gaole at, &c. in the said county, and to his deputy and deputies there, and to every of them, Greeting. Whereas upon complaint made unto me this present day, by A.B. of Weston in the said county Yeoman, I went immediately to the dwelling house of the said A.B. of Weston aforesaid, and there found C.D. E.F. and G.H. of aforesaid, Labourers, forcibly, and with strong hand and armed power, holding the said house, against the peace of our Sovereigne Lord, and against the forme of the statute of Parliament thereof made in the fiftenth year of the late King Richard the second. Therefore I send you (by the bringers hereof) the bodies of the said C.D.E.F. and G.H. convicted of the said forcible holding, by mine owne view, testimony, and record: Commanding you in his Majesties name, to receive them into your said gaole, and there safely to keepe them, untill such time as they shall make their fines to our said Sovereigne Lord for their said trespasses, and shall be thence delivered by the order of the law of the Land. Hereof faile you not, upon the perill that may follow thereof. Yeoven at Weston aforesaid, under my seale, the day and yeere abovesaid.

The forme of a precept (to the Sheriffe) to returne a Jury, for an inquiry.

Cantabr.

Johannes Cotton, Niles, unus Justiciarius Domini regis ad pacem in Comitatu Cantabr' conservand' assign' Vicecomitis' ejusdem comitatus salutem. Ex parte dicti Domini regis tibi mand' & precipio, Quod venire facias coram me apud Balsham in comitatu pradieto, vicesimo die Septembris, proximo futur' 24. probos, sufficientes, & legales homines de vicineto de Weston, in

in comitat' prædict' quorum quilibet habeat 40. solidor' terrar' & tenemen-
tor' vel redd. per annum ad minus ultra reprisas, ad inquirend' super Sa-
cramenti suum pro dicto domino rege de quodam ingressu manusforti factio in
messuag' cujusdam A.B. apud Weston præd. contra formam stat' in Parliam'
Dom' Henric' nuper regis Angliæ sexti, anno regni sui octavo tenth editi, ut
dicit'. Et videas quod super quemlibet Juratorum per te in hac parte impa-
nellandorum viginti solidos, de exitibus ad præfat' diem returns: Et hoc nul-
latenus omittas sub pœna viginti librar' quam noveris te incursum, si in exe-
cutione præmissor' tepidus aut remissus fueris: Et habeas ibi tunc hoc precep-
tum. Teste me præfat' Johanne Cotton, decimo die Martii, anno regni do-
mini nostri Jacobi Dei gratia Angliæ, Scotia, Francia et Hibernia regis, si-
dei defensor, &c.

Note, when the Justices of peace are to enquire upon the stat. of 8. H. 6.
(or any other stat.) they may make their precept to the Sheriffe, to return
before them Pannels to enquire for the King (generally) of such things as
shall be enjoyned them on the Kings Majesties behalfe, without saying, to
enquire of a forcible entry, or of a Riot, &c. *Crompt. 123.*

The forme of the Enquiry, Indictment, Present-
ment, or Verdict of the Jury.

Inquisitio pro domino rege capi' apud B. in comitat' prædict' die cantabr.
Julii, anno regni domini nostri Caroli Dei gratia Angl' Scotia, Francia
et Hibernia regis fidei Defensor, &c. per sacramentum A.B.C.D.E.F.
&c. coram Johanne Cotton, Militi uno Justiciar' dicti domini regis ad pa-
cem in dicto comitat' conservand'. Necnon * ad diversas felonias, transgress.
et alia malefacta in eodem comitat' perpetrata audiend' et terminand' assign.
Qui dicunt supra sacramentum suum prædictum qd' A.B. de W. prædict' Yeoman,
diu legitime et pacifice seissus fuit in dominio suo, ut de feodo de et in
anno messuagio, &c. cum pertinentiis in W. prædict' et possessionem ac seisinam
suam prædictam sic continuavit quousque C.D. de &c. et alii malefactores
ignoti, primo die Septembris ultimo elapso (*vi et armis, videlicet, cum ba-
culis, gladiis, arcibus et sagittis, cultellis, falcastris, lapid', et aliis armis de-
fensivis et offensivis) in messuagium prædict' &c. intraverunt, ac ipsum A.B.
inde disseisiverunt et manusforti expul', et eundem A.B. sic disseisitum et ex-
pulsus ab eodem messuagio, &c. a prædicto primo die, &c. usque ad diem cap-
tionis hujus inquisitionis, cum hujusmodi fortitudine & potentia armata ex-
tra tenuerunt, et adhuc extra tenent, in magnam pacis dicti dom' regis pertur-
bationem, ac contra formam statuti in Parliamento domini Henrici, nuper re-
gis Angliæ sexti, anno regni sui octavo tenth, in tali casu editi et provis-
i ubi nullus eorum, nec aliquis alius cujus statum ipsi aut aliquis eorum ha-
buerunt, aut habuit, aliquid in eodem messuagio, &c. aut in aliqua inde par-
cella habuerunt, aut habuit infra tres annos proxim' ante ingress' suum præ-
dictum, neque alio tempore precedente ad notitiam Jurator' præd.

Alio modo super Statutum 8. H. 6.

Jurator. pro Domino rege presentant, * quod cum in statuto in Parlia-
mento Domini Henrici, nuper regis Angliæ sexti apud Westmonast. an-
no regni sui octavo tenth editi, inter cetera continentur, Qd' si aliqua perso-
na, sive aliqua persona de aliquibus terris aut tenementis manusforti expul's.
seu

* Parle
necessary
de ce. part.
vide hic
cap. 134.

* Yet these
words: vi et
armis, here
seem to be
needlesse,
being ne-
cessarily
implied in
the word
manusforti.
Vide ant.

tit. Forcible
Entry.
This last
clause may
be omitted.

* And yet
it seemeth
not best to
recite the
stat. but
shew the
forcible en-
try, &c. &
to conclude,
contra formam
stat. in Parli-
amento. &c.
Vide post. lit.
Indictment.

sen disseisit' vel pacifice expellatur & postea manu forti extra teneatur vel aliquod seoffement' vel discontinuac' inde post talem ingressum ad ius possessoris defraudandum & tollendum aliquo modo fiat, habeat in hac parte pars grava' versus talem disseisitor' assisam, vel per actionem transgress'. Et si pars grava' per assisam, vel per actionem transgress'. recuperet, vel per veredictum, vel aliquo alio modo per debis' legis formam inveniatur, quod pars defendans in terris, & tenementis, sic ingressus fuit, vel ea per vim post talem ingressum suum tenuit, recuperet quod dampna sua ad triplum versus talem defend. & ulterius idem defend. finem & redemptionem dicto Domino regi fecerit, prout in Statu' prae'd. plenius continetur. Quidam tamen W. W. nuper de W. in com' prae'd. Husbandman, & G. D. de eadem Laborer, statutum prae'd. minime ponderant, nec penam in eodem statu' contenti' aliquamiter verentes die Februar' anno regni Regis Caroli, &c. apud C. in com' prae'd. in unum horreum existent' liberum tenement' Roberti W. Decani Ecclesiae Cathedralis W. manu forti, ac vi & armis, videlicet, gladiis, &c. intraver' et ingressum fecerunt, et prae'd. Decanum Ecclesia prae'd. a libero tenement' suo manu forti, ac vi & armis prae'd. inde sine iudicio expuler' et disseisiver' & L. P. milit' firmar' Decani prae'd. Horrei prae'd. ad tunc et ibid. de prae'd. horreo expulerunt et eiecerunt, et prae'd. Decanum sic inde expulsum et disseisit' a prae'd. die Februar. anno supradict' usque diem captionis huius inquisitionis, de prae'd. horreo vi & armis prae'd. & manu forti extra tenuerunt, & adhuc extra tenent, in contemptum dicti domini Regis nunc, & ad grave dampnum ipsius R. & contra pacem dicti domini regis, & contra formam statuti prae'd. &c.

Another, wherein the Statute is not recited.

INquiratur pro Domino rege, Si A. B. & C. D. nuper de &c. assumptis eis aliis malefactoribus, & pacis Dom' regis perturbatoribus modo guerrino arrainat' ad numer' xij. person' quorum nomina ad praesen. jurat' ignor' x. die &c. apud D. &c. (vi & armis, viz. &c.) in unum messuag' cum pertin' super pacificam possessione' M. L. intraver' et dictum M. a possessione sua prae'd. expul. & disseisiverunt, et eundem M. sic expulsum et disseisitum a prae'd. messuagio cum pertin' vi & armis prae'd. ac manu forti extra tenuerunt, & adhuc extra tenent, contra pacem dicti dom. regis, ac contra formam statuti dom Hen. nuper reg' Ang' 6. anno regni sui 8. inde edit' & provis.

Alio modo super statutum, 5 R. 2.

INquiratur pro dom. rege, &c. * quod cum in statuto in Parlamento dom' Richardi nuper regis Ang' secundi post conquestum, apud Westm' anno regni sui quinto teni' edit', inter cetera ordinat' sit, quod nullus faceret ingressum in aliquas terras sive tenement' nisi in casu, ubi ingressus datur per legem, et illo casu non manu forti nec cum multitudine gentium, sed licito et quieto modo tantum; Et si quis in contrarium fecerit, et inde debite convict' fuerit, per imprisonment corporis sui puniatur, et finem ad voluntatem domini regis faciat, prout in eodem stat. inter alia plenius continetur. Quidam tamen T. H. de I. in comitatu prae'd. Yeoman, & alii, &c. Statutum prae'd. minime ponderant, 2. die Maii, anno regni dom. Caroli, &c. vi & armis, viz. baculis, gladiis, falcatris, & bifurcis in unum clausum I. C. milit' in com' prae'd. in quodam loco ibidem vocat' H. super

* For such recital of the statute after in the title Indiments.

per possession. ejusdem I.C. militis, ubi ingressus eius, aut eorum alicui non datur per legem ingressum fecerunt, & cent' perticas sepium vivar. ipsius I. militis, adsunt & ibid. crescent' radicaver' evulserunt, & spoliaverunt, in dicti domini regis nunc contemptum, & ad grave dampnum ipsius I.C. militis, & contra formam stat. præd. &c.

Note, that upon Indictments, &c. the Jury bee onely charged with the effect of the bill of Indictment, *sc.* whether the parties bee guilty of the Forcible entry (or other fact) or not; And not whether they be guilty, in or under such manner and form as the Indictment or bill specifieth, or not; (*sc.* not whether it were with staves and swords, &c. which is but matter of forme, and must be kept in every indictment, though the parties had neither staffe, sword, nor other weapon.) And so when the Jury say *Billa vera*, they say true as they take the effect of the Bill to be. And if there be false Latine in the bill of Indictment, and the Jury finde it *Billa vera*, yet their verdict is true, *sc.* as to the fact, and their verdict stretcheth not to the forme of words, but to the effect of the matter, and to the fact, *sc.* they are to enquire whether there were any such fact done by the parties, or not: And so though the bill varie from the day, from the yeere, and from the place, and the Jury finde *Billa vera*, yet they have given a true verdict. Doctor and Student. 162. 163.

And therefore the Justices of peace before whom such Indictments of Forcible Entry, or of Riots, &c. shall be taken, shall doe well to informe the Jury that they are bound to regard the effect of the bill of indictment, or the fact, and not the forme.

The Warrant to the Sheriffe for the making of restitution,
(if the Justice himselfe will not make it.)

Johan. Cotton miles, unus Just. &c. assignat: Vicecom. ejusdem comit. *canab:*
salut: Cum per quandam Inquisition' patrie coram me apud B. in Comit.
præd. 29. die Julii, &c. super sacramentum A.B.C.D.E.F. &c. ac per formam
statut. de ingressibus manusfortis, factis in tali casu provisum, compert' fuit
Quod C.D. &c. & alii, &c. primo die Sept. &c. in quoddam mesuag. &c. A.B.
&c. in W. præd. vi & armis ingressi sunt, ac ipsum A.B. inde tunc manusforti
disseisiverunt, & expulerunt, & præd. A.B. sic expulsus a prædict. mess. &c.
a præd. primo die Sept. &c. usque ad diem captionis Inquisitionis præd. manu-
forti, & cum potentia, extra tenuerunt, prout per Inquisition' præd. plenius
liquet de recordo: Ideo ex parte dicti domin' regis tibi mando & præcipio qd'
(ad hoc debite requisitus) una cum posse comitatus tui (si necesse fuerit) accedas
ad mess. & cetera præmissa, ac eadem cum pertin' reseisire facis, & præf. A.B.
ad & in plenam possess. suam inde, prout ipse ante ingress. præd. fueras seisitus
restitui, & mitti facias juxta formam dicti stat. & hoc nullatenus omittas
periculo incumbente. Teste me præf. Jo. Cotton, &c.

This warrant to the Sheriffe to make restitution, shall be under the Te-
ste of one of the Justices onely, as it seemeth, Dyer, 187.

A Certificate of the presentment, or verdict of the Jury, into the
Kings bench (whereof vide antea tit. Forcible Entry.)

A Certificate into the Kings Bench, of the Record of a force, viewed by the Just. (whereof *vide antea* *tit. Forcible Entry.*)

* See the
like *hic cap.*
46. *fine.* These two former Certificates (and the like) may bee done and made by the Just. of peace, by way of a * letter (as it seemeth) inclosing there- in the said presentment of the Jury, or the said record of the Just. Except the same be removed thither by a *Certiorari*, and then may the Just. re- turne them in such manner as appeareth hereafter, *tit. Certiorari*, with somelittle alteration.

Or the Justice of peace may himselve deliver into the Kings Bench, such Presentment found before him; or such Record made by him, and the like, and that without any *Certiorari*: for that hee is a Judge of Record. See *hic cap.* 134. # B. 4. 18.
Br. Cor. 132.
Crom. 131.

The forme of the Certificate (or the manner of the Returne) of the writ upon the Statute of Northampton, in- to the Chancerie.

Upon the Writ it selfe these words may be indorfed.

The returne. *Executio istius brevis patet in quadam schedula eidem brevi consuta.*

And the Schedule may be thus.

The Certifi- cate.

E Go Johan. Cotton, miles, unus Custodum pacis Domini regis in com. Cantabr. certifico in cancellariam dicti Domini regis, quod virtute istius brevis mihi primo deliberati, decimo die Apr. anno &c. publice proclamari (ex parte dicti Domini regis) feci, apud B. cujus in dicto brevi sit mentio, prout in dicto brevi precipitur, Et qd quidem A.C. & D.E. de F. in com. praed. Labourers, praed. proclam. parvipendunt, post proclamationem praedicti ibid. sic facti, armati ierunt, ac armati potentiam ibid. duxerunt, sc. duas galeas, unum arcum & decem sagittas, duos gladios, & totidem pugiones, in perturbationem pacis dicti dom. Regis, ac terrorem populi sui, necnon in contemptum stat. in dicti brevis specificati manifestum. Ac proinde dicti A.C. D.E. una cum armaturis suis praed. arrestavi, & eorum corpora ad prox. prisonam dicti dom. regis in com. praed. duci feci, ibidem moratur donec aliud a dicto domino rege pro ipsorum deliberatione habuero in mandatis. Armaturas etiam eorum praed. apretiari feci, per A.B. C.D. & E.F. de B. praed. Yeomen, ad hoc iuratos, Qui dicunt super sacrament. suum praed., quod praed. duae galeae valent decem solidi, Et quod dicti arcus & decem sagittae valent sex solidi, Et quod gladii praed. valent viginti solidi, Et quod dicti pugiones valent quinq; solidi, & sic armatura praed. valent in toto quadraginti & unum solidi, de quibus paratus sum respondere secund. tenorem dicti brevis, In cuius rei testimonium huic praesenti certificationi meae sigillum meum appo- sui, dat. apud praed. die & anno supradictis.

Jo. Cotton.

The

The forme of a Certificate to be made by him which shall take the oaths of a Justice of peace, by Commission, or *Dedimus potestatem*.

Upon the Commission (or *Dedimus potestatem*) in or of these (or the like) words.

Executio istius brevis patet in quadam schedula huic brevi annexa'.

And the Certificate may be thus.

EGO M. D. in Cancellaria Dom' regis certifico, me virtute brevis dom' regis, huic schedul' annexa' x. die mensis Decemb' Anno regni dicti dom' regis Jac' Dei gratia regis Ang' & c. 19. et Scotia, 55. apud Westwratting in com' Cant. Recepisse sacram Johan' Milisenti milis' (in brevi pred. nominat' tam de officio custod. pacis dicti dom' reg' in dicti com' Cant' bene et fideliter faciend. juxta formam schedul' breviped. annex. Quam sacram' specificat' in actu Parliam' Anno reg' dom' Eliz. nuper regina Ang' primo fact': secundum tenor' brevis et schedula, brevi pred. similiter annex': et in omnibus prout in prad. brevi precipitur. In cujus rei testim', & c. M. D.

Riots. CAP. 130.

The forme of the Record of a Ryot, viewed by the Justices, and Sheriffe, or Undersheriffe.

Memorand. qd' vicesimo die Jan'. Anno Regni Domini nostri Caroli Dei gratia, & c. Nos Johan' Cuts Miles, et Johan' Cage Miles, duo Just' dicti dom' regis ad pacem in com' prad. & c. assign' et Willielmus Wendy Miles, adiunc vicecom' ejusd. com', ad gravem querim' et humilem petition' A. B. de C. in dicti com' Yeoman, in propriis personis nostris accessimus ad domum mansional. ipsius A. B. in C. pred. adiunc & ibid. invenimus D. E. F. G. et H. I. de C. pred. Laborers, ac alios malefactores et pacis dicti dom' regis perturbatores ignotos: (ad numerum decem person') modo guerrino arraiatos, viz. gladiis, pugionibus, galeis, loricis, arcubus, et sagis, illicite et riotose aggregatos, et eandem domum obsidentes, multa mala in ipsum A. B. comminantes, in magnam pacis dicti dom' regis perturbationem, ac populi sui terrorem, et contra formam stat' in Parlamento dom' Henrici nuper regis Angl' quari, anno regni sui decimo tertio tento edui et provisi, ac propterea nos prefati Johannes Cuts, Johannes Cage, et Willielmus Wendy, prad. D. E. F. G. H. I. & c. tunc et ib. arrestari, ac prox' gaola dicti dom' regis in com' prad. duci fecimus, per visum et recordum nostrum de illicita congregatione et riotia prad. convictos, ibid. moraturos quousque finem dicto dom' regi proinde fecerint. In cujus rei testim' huic prefati recordo nostro sigilla nostra apposuimus, Dat' apud C. pred. die et anno primo suprad'. Cantabr.

Lamb. 312.

And if a man bee flaine or maimed, or a rescous bee done to the officer by the Ryotters, then the Record ought to bee riotose occiderunt, or riotose mahimaverunt, or riotose rescusserunt, but not felonice, nor simply

M m

rescusserunt

rescufferunt, because their authority is in this case restrained to the riot one-ly: so as notwithstanding that record, the parties may plead, Not guilty, to the felony, or to the rescous, howsoever for the ryot they are estopped.

Mittimus. The *Mittimus*, for conveying the ryotors to the gaole, may (with some few words of change) bee made out of that, which is here before, for such as hold by force. See hercof paulo ante, amongst the *Presidens*, in *Forcible Entry*.

The Precept (to the Sheriffe) to returne a Jury, for an Inquiry upon a Riot.

Cantabr. **J**ohannes Cutts, Miles, & Johannes Cage, Miles, duo Justic' &c. assignat; vicecomit' ejusdem comitatus salutem. Ex parte dicti domini Regis tibi precipimus, quod venire facias coram nobis apud I. in comitatu predicto die Januarii prox. futuro 24. probos, suffic' et legal' homines de comitatu predicto, quorum quilibet habeat terras et tenementa, infra dict' com' liberit' tenementi per chariam, ad annum valorem viginti solidor', aut per copiam Rotul' Curie ad annum valorem viginti sex solid' et octo denarior' aut per utrumque ultra omnes reprisas; ad inquirendum pro dicto Domino rege, ac pro indemnitate nostra in hac parte, super sacramenti suum de quibusdam illicitis aggregationibus et riotis apud C. in comitat' prad' nuper commissis ut dicitur. Et hoc nullatenus omittas sub pena viginti librar', quam incursum es, si in executione premissor' defeceris. Et habeas ibi tunc nomina Juratorum predictorum, & hoc preceptum. Dat' sub sigillis nostris die Januarii, anno regni dicti domini nostri Caroli, &c.

The forme of the Inquiry, Indictment, or Pre-
sentment of the Jury.

Cantabr. **I**nquisitio pro dom' rege, &c. (as before in *Forcible Entries*) coram Johanne Cutts, milite, & Johanne Cage milite, duo Justic' &c. Qui ad hoc jurati et onerati, dicunt super sacramenti suum prad', Quod D. E. F. G. et H. I. de S. in com' prad'. Laborers, simul cum aliis malefactoribus, et pacis dicti dom' reg' perturbatoribus ignotis (ad numerum sepi' person') modo guerrino armati, vi et armis, viz. hawberdis, gladiis, arcubus et sagittis, die mensis Jan' ultim' preterito apud C. in comitatu predicto, inter horas octavam et nonam post meridiem ejusdem diei, domum mansionalem A. B. de C. predicti Yeoman, situat' in C. prad' riotose fregerunt et intrav', et in ipsum A. B. tunc et ibid. insultum fecerunt, ac ipsum tunc et ibi verberaverunt, vulneraverunt, & indignis modis tractav'. Ita quod de vita ejus desperabatur, in magnam pacis dicti dom' reg' perturbationem, et pop' terrorem, ac contra formam stat' de riotis, routis, et congregat' gentium illicitis in Parliam' Dom' Hen. nuper regis Ang' quart', an. regni sui decimo tertio tenor' provis' et editi.

Assault.

Note that all indictments of Riots, or *Forcible entries*, &c. taken before Justices of P. must be after this forme, sc. *Inquisitio*, &c. capta, &c. coram I. C. et R. T. &c. (if out of the Sessions; or if at the Sessions, then *Coram I. C. et sociis suis*) Justic' Dom' Regis ad pacem in dicto Comitatu conservand. Necnon ad diversas felonias, &c. Qui, &c. ut hic in *Forcible Entries*. Vide etiam hic cap. 134. fine.

Inquisitio

Alias.

Quicke
hedges
destroyed.

INquisitio, &c. qui dicunt, &c. *Qd' A.B.C.D. et E.F. de &c. aggregat' eis quampluribus aliis malefactoribus, et pacis dom' regis perturbator ignotis ad numer' sex person' modo guerrino arrais' per instigationem et procuracionem I.S. 3. die Sept' anno &c. xi & armis, viz. gladiis, baculis, et aliis arm' tam invasivis quam defensivis apud Ab. Mag' in com' Cani: injuste, riotose, et routose assemblerunt, clausumque W. H. milii' apud A. pred. adiunc' & ib' injuste fregerunt et intraver' et decempertic' sepium vivar' ipsius W. H. militis adiunc' et ibid. crescenti' eradicaver', evulserunt & spoliaverunt, ad grave dampnum ipsius W. H. Ac contra pacem dict' dom' regis et contra formam diversor' stat' in huiusmodi casu editor' et provisor.*

Alias.

Hedges cut
or pulled
up.

Clausum Willihelmi H. (apud F. or vocat' &c.) infra paroch' de Ab. magna in com' pred. riotose fregerunt et intrav' ac sepes et clausum pred. W. H. ad numerum sexcent' ped. adiunc' et ib' existenti' laceraverunt, irrumper' et prostraver' ad grave dampnum, &c. Ac contra pacem, &c.

Alias.

Ditches
cut down.

AC foss' ibid. existenti', adiunc' et ibid. cum ligonibus, et bipallis foderunt, planaverunt et impleverunt, ad grave dampnum, &c.

Alias.

Cutting &
chrying
corne.

Clausum, &c. injuste freger' et intraver' et sex acras tritici adiunc' et ib' crescenti' valoris, &c. de bonis et catallis W. H. pred. adiunc' et ibid' inveni' injuste, riotose, et routose, messuerunt, falcaverunt, et asporaverunt, ad grave dampnum, &c.

Alias.

Trespasse
&c.

Quoddam clausum vocat' &c. cuiusd. R. T. armig' freger' et intraver' ac herbas ipsius R. T. adiunc' et ib' crescenti' cum quibusd. averiis non solum depast' fuer' conculcaver' et consumpser'. Sed etiam pred. clausum cum equis et aratro araver' et subver' Ad grave dampnum, &c.

Alias.

House broken,
and
goods taken
away.

Domum cuiusd. I. S. apud &c. freger' & intrav' ac bona et catal. pred. I. S. ad valenti' x. li. in domo sua pred. adiunc' inveni' riotose ceperunt, spoliaver' et asportaver' ac cistas ipsius I. S. in domo sua pred. tunc existenti' riotose freger' et sex coclear' argenti ad valenti' 40. s. de bonis et catal' ipsius I. S. adiunc' et ibid. inveni' riotose ceper' & asportaver' ac bordeum ipsius I. S. tunc et ibid. in horreo suo inveni' riotose ceper' et spoliaver' et asportaver' Ad grave dampnum, &c.

As for the Certificate (which ought to bee made to the King, and the Counsell, in case that by this inquiry, the truth of the fault, and Ryot bee not found) such Certificate may bee done in English, by way of a letter, comprehending the truth of the whole matter, with the cer-

tainty of the time, place, and other circumstances of the fact or ryot, together with the certainty of the names of the Rioters; as also of the names of such, who by maintenance, embracery, or otherwise, were any impediment to the finding thereof, with their severall misdemeanors: which Certificate or letter is to bee directed and sent by the said Justices of peace and Sheriffe, or Undersheriffe, into the Starre-Chamber, or Kings Bench, &c. within one moneth. See *antea* *tit. Riots.* Br. Praem. 1.

A Traverse to an Endictment of a Rior, and
the Record thereupon.

contra.

Alias, sc. ad Sessionem pacis tentam apud Castrum Cantabr. in com' The stile of the session
præd. die Martis proxim' ante Festum Sancti Mathæi Apostoli, anno
regni Domini nostri Caroli Deigratia, Anglia, Scotia, Francia, et
Hibern' regis fidei Defensor, &c. coram et aliis
sociis suis Justiciis dicti Domini regis ad pacem in comitat' prædict' conser-
vand. necnon ad divers. felon' transgr', & alia malefacta in eod. com' per-
petrata audiend. et terminand. assign': per sacramentum duodecim Jurator'
exiit præsentatum quod I. L. de &c. R. M. de &c. et T. L. de &c. cum di- The iudic-
ment.
versis aliis ignotis malefact' et pacis dicti Domini regis periurbatoribus, mo-
do guerrino arraiato, unius et assemblei vicesimo die Julii in noct' ejusdem
diei, anni, &c. vi et armis, viz. baculis, gladiis, clypeis, pugionibus, falcistris,
et aliis armis, tam invasivis, quam defensivis, apud C. &c. riorose, et rousose,
fregerunt et intraverunt, et octo plaustra fæni ad valeni', &c. ad tunc et ibid.
existent', de bonis et catallis dicti ad tunc et ibid. injuste et illicite
ceperunt et asportaver' contra pacem dicti dom' regis &c. Et contra formam
stat' inde editi et provisi per quod præcepti fuit vic' Com', quod non omitteret Procedit
ad respon-
&c. quin venire faceret eos ad respondend. &c. postea q; sc. præd. die Martis
prox' ante festum sancti Mathæi Apostoli anno
supradicto coram præf. Justic' venerunt præd. I. L. R. M. et T. L. in propriis
personis suis, et habito audio indictamenti præd. separati dicunt, quod ipsi non
sunt inde culpabi' et de hoc ponunt se super pairiam. Et A. M. qui pro dom' rege
in hac parte sequitur similiter. &c. Ideo veniat inde jurata coram Justic' dicti Traverse
Jury.
dom' regis ad pacem in com' præd. conservand. assign', &c. ad Sessionem pacis
apud &c. die Martis prox' post Epiphaniam dom' tunc prox' Day given
futuro tenend. Et qui, &c. ad recogn', &c. quia tam &c. idem dies datus est
tam præf. A. M. qui sequitur, &c. quam præf. I. L. R. M. et T. L. &c. ad quas
quidem sessiones, tent. apud præd. in com' præd. die, &c. coram Dom' T.
P. G. N. et H. P. milit' et sociis suis Justic' dicti dom' regis ad pacem in com'
præd. conservand. Necnon ad divers. felon' transgr' et alia malefacta in eod.
com' perpetrata audienda et terminand. assignat'; venerunt tam præf. A. M.
qui sequitur, &c. quam præf. I. L. R. M. et T. L. in propriis personis suis, The veri-
dict.
Et Jurator' præd. per vicecom' com' prædict' ad hoc impanellati et exati,
viz. I. F. I. G. &c. similiter venerunt, qui ad veritatem de præmiss' dicendam
triat' et jurati, dicunt super sacramentum suum, qd' præd. I. L. R. M. et T. L.
culpabiles sunt; et eorum quilibet culpabilis est de transgress. contemptu, et The judg-
ment.
riotto prædictis in indictamento prædict' superius specificatis, modo et forma
promiss' superius vers. eos supponitur, Ideo concessum est per Curiam qd' præd. Cap. pro fin.
I. L.

I. L. R. M. & T. L. capiantur ad satisfaciend' dict' Dom. Regi de finibus suis occasione transgressi. contempnus & rionis prad'. Qui quidem I. L. R. M. & T. L. adiunct' & ibid' presenti in cur' petierunt se ad finem cum dict' Dom. Rege occasione prad' admitti. Et inde ponunt se separatim in misericord' Dom' Regis & assessatur finis ejusdem I. L. per Justic' prad' ad tres lib. sex solid', octo denar'; Et finis ejusdem R. M. assessatur ad viginti solid', Et assessatur finis ejusdem T. L. ad quinque libr', bone & legalis monete Anglie, Ad opus & usum dicti Domini Regis. Ponunt se in misericordia Regis. Fines assat.

I have inserted this former President, for that it discovereth much matter worthy the Justices observation:

Indictments. CHAP. 131.

FOR the forme of indictments, in cases of Forcible Entry and Riots; I have here before let you downe certaine Presidents; nevertheless for that these indictments be the chiefe foundation whereupon the whole businesse and triall is after to be grounded and built, I thought it not amisse to observe here these few generall rules, as well concerning the matter, as the forme, of these, and all other indictments or presentments, to be taken before Justices of peace.

First, in these indictments of Forcible Entry, & Ryots (as also in all other indictments of felony or Trespasse) it is good to say *contra pacem*, or other words to that effect.

Lamb. 484.
17. H. 8. c. 5. Also these words, *vi & armis*, viz. *gladiis, &c.* are not of necessitie, yet it is good to use them, especially if the circumstances of the fact do require them; for these circumstances do either aggravate or diminish the offence. *Stamf. 94.*

But these words, *vi & armis &c.* are needlesse in an indictment of Forcible Entry, because they are implied in the word Force.

Yet note that in all indictments of Treason, Murder, Felony, or Trespasses; these words, *vi & armis*, are necessarie to be put in: (Otherwise it seemeth of offences which are *Contra pacem tantum*, as Conspiracies, Deceits, Slanders, escapes for Debt, and the like.) *Finch.*

Co. 4. 48.
Dr. Parliament. 87. Also in indictments found upon statutes, it is not needfull, nay, it is not safe to recite the statute at all: for as the recitall is not necessarie; so the misrecitall thereof in the matter, or in the yeare, day, or place, is fatall to the indictment, and maketh it void: But it is safe and sure to draw the indictment with this conclusion, *scz.*

Co. 4. 48.
Dyer 363. *Contra formam statuti in hujusmodi casu provisi ac editi*, If the indictment be founded upon one statute: or, *contra formam diversorum statutorum in hujusmodi casu editi. & provisor*, without naming any speciall statute, where many stat. do concerne one offence. *Crompt. 104.*

Plow. 1. & 79.
Lamb. 485. Co. L. 98. b. Yet the offence against the stat. must be certainly described in the indictment, and the Substance, and materiall words in such statute must be fully set downe therein.

Also all indictments and presentments (being in the nature of declarations for the King against the offenders) ought to containe certaintie, & shall not be supplied or maintained by implication; intendment, or argument, Co. 5. 120. Plo. 84. 122. and therefore fixe principall things bee most commonly requisite in all presentments before the Justice of peace, viz.

Lamb. 469.
&c.
Br. Indictment. 6. 24.
34-46. & 97.
Stand. 96.

1 The names, and surnames as well of the parties indicted, as of the parties offended, with the addition of the degree or mystery, and the dwelling place of the partie indicted, (sc. both the Towne, and County.)

Yet in some cases, an indictment, *quod procuravit personas ignotas*, or *quod bona cujusdam ignoti cepit*, &c. or the like, may be good. See *pluu* Lamb. 470. 476. Br. Indictment 6. 10. 11. Dyer. 99. & Plo. fol. 85. b.

2 The time, sc. the day and yeare when the offence was done.

3 The place, sc. the towne, and County, where it was done, as at B. in the County of C.

Br. Indictment. 24-41.
42.

4 The name or qualitie of the thing, in which the offence is committed; viz. of dead things, it may be, *bona & catalla*, expressing them certainly: of live things, *equum, bovem, ovem*, &c. but not *bona & catalla*. So of entry, &c. into lands, &c. to expresse certainly, whether it bee a house, land, meadow, pasture, wood, &c.

Lamb. 478.

5 Also the value or price of the thing is commonly to be set down, to aggravate the fault.

6 The manner of the fact, sc. the manner, and nature of the felony, or trespassse. See *Lam.* 480. Br. Indict. 7. 36.

Lamb. 480.

And yet for the form of Indictments, the Jury are not strictly tyed thereunto (sc. to the day, yeare or place, &c.) but chiefly to the matter of fact. *Vide hic. Cap. 129.*

Verily.

Also indictments ought to be framed so neere the truth as may be, and the rather, for that they are to bee found by the Jury upon their oaths. Co. 9. 119. Plo. 84.

Yea, an indictment, being *veredictum, id est, dictum veritatis*, and a matter of record, ought to set forth all the truth, that by law is requisite; for *de non apparentibus, & non existentibus eadem ratio*: And every part of the indictment materiall ought to be found by the oath of the Jurors, and is not to be supplied by averment; otherwise the indictment will bee insufficient.

Co. 4. 47.

But false Latin shall not make void an indictment. Co. 5. 121.

And to this purpose note, that false Latin may be said to be of three sorts.

First, words of Art, being words significant allowed by our Law, and knowne to the Sages of the Law, although not allowed by the Grammarians, nor having the countenance of Latin: As *Messuagium*, *Tostium*, *gardin*, *bruera*, *murdred*, *burglariter*, *felonice*, &c. these and the like are words of Art, and are allowed in our Law; yea the Civilians and Physicians doe use the like: And every science have their *vocabula artis*.

The second sort are false writing or incongrue Latine, as *viginti* for *viginti*,

viginti, septinginti for *septinginta*, *prefato* for *præfate*, &c. these two former sorts shall not avoyde, or make voyde any Enditement, Grant or Deede.

The third sort are words insensible, especially if the words of art are written insensibly or falsly, as *murdredum* for *murdrum*, *burgariter* for *burglariter*, *felonier* for *felonicè*: These words *murdredum*, *burgariter*, & *felonier* (being no Latine words, nor allowed by Law as words of art) if they shall be in any place or point materiall, they doe make void the inditement: except where such words insensible be surplusage. See Co. 4. 39. 42. & 5. 121. & 10. 133.

And yet *quare*, for these words have the countenance of those other words of art, & doe shew to the court sufficiently what is thereby meant, and seeme to be onely the false writing of the Clerkes, & therefore might be amended in case of an Enditement. See Co. 10. 133.

Processe. CHAP. 132.

The formes of Processe (upon Inditements of Trespasse) which also the Justices of Peace out of their Sessions may in some few cases make out against offenders.

NOte, that as the authoritie of making processe upon Indictments, is given by expresse words in the Commission, to the Justices of peace in their sessions; so is it given by expresse words, in some statutes, to the Justices of peace, (yea to one Justice of peace) out of their Sessions to make out processe, upon Indictments found (before them) against offenders, or upon information against them, as if they were indited of Trespasse in Sessions, as you may see here *tit. Forcible Entry, & tit. Sheriffs, antea*.

Also in some other cases, and by some other statute this authoritie of making out Processe (against offenders) by the Justices of P. out of their Sessions, seemeth to bee implied of congruence, or rather of necessitie; as where any statute doth give power or authoritie to the Justices or Justice of peace, out of their Sessions, to enquire, heare, and determine (as *hic tit. Ryots, tit. Transportation, tit. Tyle, & tit. Weights*.) In these, and in all other such cases, where the Justices may enquire, heare, and determine, there, after indictment or presentment of the offence, the said Justices may make out processe against such offenders, to cause the offenders to come and answer; for unlesse the offenders doe come in, either *gratis*, or by processe, the Justices cannot proceede to heare and determine. Again, in the former cases of transportation, Tyle, and Weight, as also in all other cases, where any Statute doth give power to the Justices of peace out of their Sessions, to heare and determine, either upon the confession of the offenders, or upon examination of the witnesses, (whereof see *antea, tit. Heare and determine, &c. cap. 66.*) In all such cases, it seemeth the Justices of peace may grant out their Processe or Warrant against such offenders, to appeare before them, to answer to their said offences: And thereupon
may

may proceed to examine, heare, & determine the offence, as being convicted thereof upon such confession or examination, without any Indictment or processe.

The difference betweene processe, and the precept or warrant of the Justices of peace, seemes to be this:

The precept or warrant of the Justice is only to attach and convent the party before any indictment or conviction, and may be made either in the name of the King, or of the Justice, as is before shewed.

Processe is alwayes in the name of the King, and usually after an Indictment found, or after other conviction.

Now these Processe seeme to be as followeth.

1. Venire
fac.

2. Distrin-
gas, or Ca-
pias.

First, if the offender be absent, a *Venire facias* shall be awarded by the Justice or Justices of peace under his or their owne *Teste*: And if thereupon the offender be returned sufficient (& maketh a default) then a *Distringas* is awarded, which *Distringas* shall goe forth *infinite*, till the offender come in: But if a *Nihil habet*, &c. be at the first returned, then after the *Venire facias*, a *Capias*, then *aralias*, and after a *Pluries* shall goe forth, and after that an *Exigent*, till the party be taken, or yeeld himselfe, or else be outlawed.

And these are the ordinary Processe upon all indictments of Trespasse against the peace, or of other offences against penall Statutes, not being felony, or a greater offence, (if it be not otherwise ordained by statute:) But this processe is commonly grounded upon an indictment, and is onely to cause the offender to come in, and to make his answer; and therefore if the offender be present, and confesse such indictment, information, or offence, then needeth there no processe at all, for he shall be forthwith committed to prison (commonly) there to remaine untill he hath paid his fine, or given sureties for it. 1. H. 7. 20. & Br. Imp. 100.

Also these processe shall be alwayes directed to the Sheriffe (who is the immediate minister and officer of the King, to execute all processe) except the Sheriffe himselfe, or his officers be parties: but if the Justice of peace be to grant out processe against the Sheriffe, Under-Sheriffe, or their officers, offending contrary to the stat. 8. H. 6. cap. 9. or 11. H. 7. cap. 15. which you may see here before, it seemeth such processe shall be directed to the Coroners of the countie, and shall be served by them; and so are divers books, as 2. H. 6. 12. 8. H. 6. 30. 9. H. 6. 11. & 18. Ed. 4. 7. & others, And so also the oath of the Just. of P. seemeth to bind them.

Note also, that this processe ought alwayes to be made in the name of the King: and for that the King is a partie, it must also be with a *Non omittas* ^{Br. Franch.} *propter aliquam libertatem* &c. But the teste thereof may be under the name of the Justice of peace.

If the offender be within any liberty or franchise, the Sheriffe is to enter the Franchise, and to execute the processe himselfe, (and not to write to the Baylife of the Franchise, because the King is a partie,) See 41. Ass. 17. Br. Franch. 18. 31.

The formes of these processe, to be made by the Justice of peace, out of the Sessions, seeme to be as followeth.

The

The Venire facias thus.

CAROLUS Dei gratia Anglia, Scotia, Francia, & Hibern' Rex, fidei defensor, &c. vic' com' Cantab' salutem. Precipimus tibi, qd' non omittas propter aliquam libertat' in balliva tua, quin venire fac' A.B. de C. in dicto com. tuo Ycoman, coram R. M. milie et M. D. armig' duobus Justic' nostr' ad pacem conservand. Necnon ad divers' felonias, transgress' & alia malefacta in dicto com' perpetrata audiend. et terminand. assignatis, apud Lynton in com' tuo die Maii prox' futur' ad respondend. nobis super quibusdam articulis super ipsum A.B. presentatis, & habeas ibi tunc hoc preceptum, Teste R. M. et M. D. apud Lynton die, &c.

The Distringas thus.

CAROLUS Dei gratia Anglia, Scotia, Francia, et Hibern' Rex, fidei defensor, &c. vic' com' Cantab' salutem. Precipimus tibi qd' non omittas propter aliquam libertat' in balliva tua, quin eum ingrediaris & distringas A.B. de C. in com' tuo Ycoman, per omnia terras & sequeant' &c. Et quod de exitibus eorum respondeas &c. Et quod habeas corpus ejus coram &c. Justic' &c. ad respondend. &c. Teste, &c.

The Writ of Capias thus.

CAROLUS Dei gratia Anglia, &c. vic' Cant' salutem. Precipimus tibi quod non omittas propter aliquam libertatem in balliva tua, quin eum ingred' & capias L. D. de A. in com' tuo Ycoman, &c. si invent' fueris in balliva tua, et eum salvo custod' fac'. Ita quod habeas corpus ejus coram R. M. milie, & M. D. armig' duobus Justic' nostris ad pacem conservand. Necnon ad divers' felonias, transgr' et alia malefacta in eodem com' tuo perpetrat' audiend. et terminand. assign' apud L. in com' tuo die Mayis prox' futur' ad respondend. nobis de divers' transgr' contempi' et offensis de quibus ipse indit'at' existit: Et habeas ibi tunc hoc breve, Teste R. M. & M. D. apud Lynton sexto die Ja. &c. anno regni nostri, &c.

Ad quem diem Willielmus Wendy, miles, vic' com' prad. retorn' quod ipse non est inventus in balliva sua, & ipse non venit, Ideo preceptum est sicut alias, &c.

The Capias alias.

CAROLUS, &c. vic' &c. Precipimus tibi sicut alias tibi precipimus, qd' non omittas, &c. verbatim ut supra.

Ad quem diem, &c. ut supra, & ipse non venit, Ideo precept' est vic' sicut pluries, &c.

The party may appeare gratis, and so avoid the attachment or arresting of his body; and that is the cause that the Entry is made, & ipse non venit.

The

The Pluries Capias.

Carolus, &c. vic' &c. salutem, precipimus tibi sicut plur' tibi precipimus, quod non omittas, &c. ut supra.

Ad quem diem Willielmus Wendy miles, vicecom' præd. retorn', quod præd. C. D. non est inventus in, &c. et ipse non venit, Ideo præcept' est qd' exigi facias, &c.

The Exigent.

Carolus, &c. vic' &c. salutem, precipimus quod exigi fac' C. D. de A. in comitat' tuo Yeoman, quousque secundum legem et consuetudinem regni nostri Ang' ulagatur si non comparuerit, et si compar', tunc eum capias et salvo custodir' fac', Ita quod habeas corpus ejus coram R. M. milite, et M. D. duobus Justic' ad pacem nostram conservand. Necnon ad divers' felon' transgr' et alia malefacta in eodem com' tuo perpetrat' audiend. et terminand. assignat' apud L. in com' tuo die Sept' prox' futur' ad respond. nobis de diversis transgr' contemp' & offensis de quibus ipse indilatus existit, et habeas ibi tunc hoc breve, teste R. M. et M. D. apud L. octavo die Septem' anno regni nostri, &c.

Ad quem diem Willielmus Wendy miles, vic' com' præd. retorn' qd' ad com'entum apud Cantabr' die . . . anno regni dom' regis nunc, &c. Et sic ad quatuor alias com' tunc prox' sequent' ibid. ten' præd. C. D. exactus fuit, et non comparuit, Ideo ulagat' fuit.

These Processe are sent out, to the end, that either the party shall come or be brought in to make his answer, and to be justified by the law, or else that (for his contumacy) he shall be outlawed, and so to be deprived of the benefit of law: but the power of the Justice of peace endeth with the utlary, for they can make no *Capias ulagatum*, but must certifie the utlary in to the Kings Bench. Lamb. 501.

Also all such Processe (as well of *Capias*, &c. as of utlary) may be stayed by a *Superfedeas* issuing from other Justices of peace (out of Sessions) testifying that the party hath come before them, and hath found sureties for his appearance to answer to the Indictment, or to pay his fine, &c. See before. Lamb. 502.

Note that this authority of the Justices of peace, in sending out these processe (being out of their Sessions) is beyond the bounds of their commission. And again, by the Commission, one Justice of peace alone cannot grant a *Capias*, nor other Processe, but two Justices of peace at the least must do it, and that sitting the Court, and in their Sessions; and yet nevertheless, in these former cases, the Statutes (expressly, or by necessary implication) giving such authority to the Justices of peace, or to one Justice alone, and that out of the Sessions, are a sufficient warrant and Commission to the Justice of peace therein, as it seemeth. The commission. 24. H. 7. 8. Br. peace 49.

Traverse.

Traverse. CAP. 133.

Lamb. 523.

After that such processe (or other processe *ad respond'*) be awarded against the party, it seemes hee may come in and yeeld himselfe to pay his fine: or else hee may offer his Traverse to the indictment found against him before the Justices of peace, and the Justices ought to allow him his Traverse against it; which Traverse is to take issue upon the chiefe matter of the indictment, or to deny the point of the indictment.

See Lamb. 523.

But although the Justices of Peace have power in some cases as aforesaid (out of their generall Sessions) to take indictments, and after such indictment found to award Processe *ad respondendum* against offenders, and to heare and determine thereof; and the offenders also have liberty to come in, and to speake, and may answer for themselves, and may offer their Traverse, and that the Justices of Peace are to allow of, and to receive the same; yet *quare* whether the Justices of Peace (out of their generall Sessions) may try such Traverse being tendred to them, without which triall all the rest may seeme idle (*vide hic cap. 84. fine.*) Or that upon the Traverse tendred, they must certifie or send the inquisition or indictment so found before them, into the Kings Bench, or unto their Quarter or generall Sessions of the Peace, there to be tried and determined: howsoever it is safest (after such traverse tendred) to certifie, or deliver such inquisition or indictment into the Kings Bench, or to their next quarter Sessions, and so to referre the tryall of the Traverse, and further proceedings therein to them. See hereof *iii. Ryot*, and *Forcible Entry*.

Certiorari. CAP. 134.

The returne of a Certiorari, sent to remove an Indictment, may be thus.

First, upon the backside of the writ of *Certiorari*, indorse thele, or the like words.

Executio istius brevis patet in quadam schedula eidem brevi annexa.

And that Schedule may be thus.

Ego Michael Dalton, unus custodum pacis, ac Justiciar' dom' Regis, ad pacem in dict' com' Cantabr' conservand. necnon ad diversas felonias, transgr' et alia malefacta in eodem Com' perpetrata audiend. et terminand. assignator, virtute istius brevis mihi deliberati instrumentum illud (unde in dicto brevi fit mentio) una cum omnibus idem instrumentum tangentibus, in Cancellar' dicti domini regis, distinte & aperie sub sigillo meo certifico. In cujus rei testimonium ego pref. M. D. his presentibus sigillum meum apposui. Datum apud W. die mensis Anno regni, &c.

Then

Then take the record of the indictment, and close it within the Schedule, and seale, and send them up both together with the *Certiorari*.

Now to shew what is further meet for the Just. of peace to know, concerning this writ of *Certiorari*, and their certifying or Returne thereof.

After an indictment found before Justices of Peace, a *Certiorari* is procured by the meanes of some party indited or grieved, thereby to remove such indictment from the said Justice, and to convey it to Justices of a higher authority, to the end the party may either traverse such indictment above, or may there avoid it for insufficiency of forme or matter.

And this *Certiorari* is the Kings writ, issuing sometimes out of the Chancery, and sometimes out of the Kings Bench, and may be directed to any Court of Record, or officer of Record (as to a Justice of peace, Sheriffe, Coroner, or Escheator) to be certified of any Record, which is before any of them: and first an *Alias*, then a *Plur*, and lastly an *Attachment* lieth against them that should send it (if the record be not certified accordingly) *Fit. 145. a* or it seemeth a *Subpœna* is used at this day.

If it be returnable into the Chancery, then are the words, *In Cancellaria nostra*; and if into the Kings Bench, then the words are, *Nobis mittatis*; and if into the Court of Common Pleas, then *Coram Justiciariis nostris de Banco*.

The *Certiorari* may be sometimes to remove and send up the Record it selfe, and sometimes but onely the Tenour of the Record (as the words therein be) and it must be obeyed accordingly. *Fit. 145. b*

If there be variance between the *Certiorari* and the Record which is to be removed, the Justices need not to certifie such Record, *Lam. 500.*

A Justice of peace may deliver, or send into the Kings Bench, an indictment found before him; or a Recognisance of the peace taken by him; or a force recorded by him, without any *Certiorari*: but if a Just. of peace having a record in his hands, be discharged of his office, now he cannot certifie it without a *Certiorari*, although he be made a Justice of peace againe. See 8 H. 4. f. 5. *Br. Record 64.*

If a *Certiorari* be to send up the Indictment of A. in which indictment some others be indicted together with the same A. yet need not the Justice of peace to make certificate concerning any but A. For although they bee named jointly, yet be they indited severally, and the King may pardon A. without forgiving the other. *6 Ed. 4. 5.*

If a *Certiorari* shall come to the Justices of peace to remove an indictment, and the party sueth not to have it removed, but suffereth it to lye still after the day of the returne of the *Certiorari*, yet it seemeth the Justices of peace ought (*ex officio*) to send it away, because the writ containeth in it selfe a commandement to them so to doe, and so is a *Superfedeas* of it selfe to the Justices of peace, to stay their other proceedings. See *anteatit. Forcible Entry.*

And yet by others, the Justices may proceed upon the Indictment. *Vide Cromp. 132. 133. & 166. Dyer 245.*

And albeit the *Certiorari* bee a *Superfedeas* of it selfe. yet may the party

Fitz. N. B.
337. G.

partie upon the *Certiorari* purchased, have a *Superfedeas* also, directed to the Sheriffe, commanding him that he arrest him not, upon that Record before the Justices of peace, *Fitz. fol. 237.* In which place also he doubteth whether the Justices of peace themselves ought not of dutie to award their owne *Superfedeas*, to the same effect, after that the Writ of *Certiorari* is brought to their hands.

Lamb. 498.

If a *Certiorari* come to the Justices of peace to remove an inditement, and in truth the inditement was not taken till after the date of that *Certiorari*, yet if the inditement be removed thereby, it is good enough, for that they both be the Kings courts, (1 *Rich. 3. 4.*) and in such a case it is now usuall to remove it. *Vide Fitz. 71. d.*

But all writs of *Certiorari*, being to remove any inditement of forcible Entrie, or Riot, or of assault and batterie, to be found before the Justices of peace, shall now be delivered at some Quarter Sessions of the peace, in open court, &c. *Stat. 21. Jacobi cap. 8. See hic antea, iii. Forcible Entrie, cap. 84.*

Lamb. 521.

All the higher courts at Westm. may write to the Justices of peace to certifie their Records, that doe make for the triall of causes depending in them, as you may reade 19. *H. 6. 19.* where they of the Common place did send to the Justices of Peace for an inditement, because in a Writ of Conspiracie (brought or depending before them) it was materiall to have it.

In some cases the Justice of peace may certifie a Record (by him made, or found before him out of Sessions) without any Writ of *Certiorari* therefore to him directed. *Vide antea, iii. Forcible Entrie.*

In other cases he must of dutie certifie his proceedings, but may spare to certifie the Record, untill a *Certiorari* come to him for it. See hereof *antea, iii. Suretie for the peace.*

For the manner of the writ of *Certiorari*, to remove records from one court to another, or from the Justices of peace or other officers of record, to any the higher courts at Westm. &c. there are divers formes and sorts thereof, as you may see in *Fitz. Na. Br. fo. 242. &c.*

I will only set you downe here one forme for all, and so conclude.

The forme of a *Certiorari* out of the Chancerie, to certifie a Recognisance, taken by a Justice of peace in the country, for the keeping of the peace, &c.

F. N. B. 31. c.
Crompt. 143.

CAROLUS Dei gratia Anglia, Scotia, Francia, & Hibern' Rex, fidei defensor, &c. Custod' pacis nostr' in Comitatu Cant' & eorum cuilibet salutem: Volentes certis de causis Certiorari, super tenorem cujusdam securitatis Pacis, (vel boni gestus) quam A. P. Armiger, nuper invenit coram vobis, vel aliquo vestrum, de eo quod ipse dampnum vel malum aliquod R. S. aut alicui alii de populo nostro de corpore suo, nec faceret nec fieri procuraret quovismodo: vobis mandamus, quod tenorem securitatis pacis (sive boni gestus) pradii nobis in Cancellar' nostr' in O'habis Purificat' beatæ Mariæ, prox' futur', ubicunque tunc fuerit, sub sigill' vestr', vel unius vestrum distincte & aperte sine dilatione mittatis, Et hoc sub pœna centum libr' nullatenus

tenu omittatis, nec aliquis vestrum omittat. Teste meipso apud Westmonast. die Novembris, anno regni nostri sexto.

The returne hereof, See antea, iii. *Summe for the peace, cap. 73.*

Nota quod Record ne serra remove, me per Certiorare, ou Corpus cum causa. Fitz. Record, 3.

Note also that upon a *Certiorari* to remove an Indictment of a Riot, or forcible Entrie, &c. the Returne must have these words, *Necnon ad diversas Felonias, &c.* For if the Returne mentions onely that they are Justices of the Peace, without the former words *Necnon ad diversas felonias, transgress. & alia malefacta, &c.* according to the Commission, the Returne is insufficient. 12. H. 7. 25. 2. R. 3. 9. Br. *Indictment* 32. 50.

Also note that no *Certiorari* shall bee granted to remove any Recognisance, except the same writ bee signed with the proper hand of the chiefe Justice, or (in his absence) of one of the Justices of that court, out of which the same Writ shall be awarded or made: statute 1. & 2. Ph.

& M. cap. 14.

Deus
Minimis Magnus.



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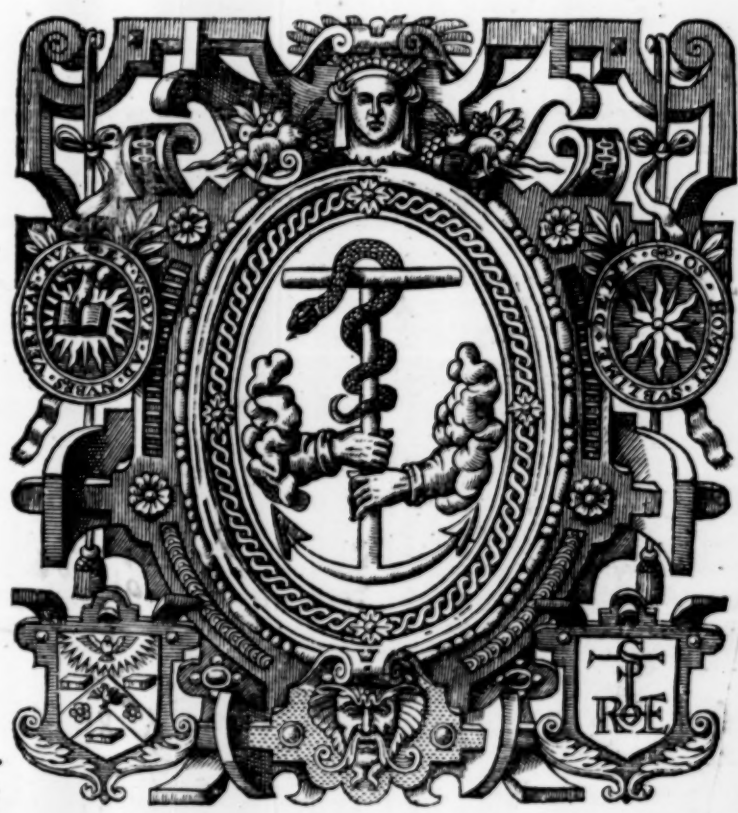


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Soli Deo Gloria.

Deus
Minimis Magnus.



Commentary
Containing the Practice
of the Justices of the Peace
out of their Sessions :

Gathered for the better help
of such Justices of Peace as have
not been much conversant in the Bu-
sines of the Lawes of this Realm :

Now the fiftie time published, re-
vised, in many things corrected,
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the Chancery.

Justices of the Peace of England, and the magis-
trates of Wales. C. 16.

Cum privilegio

LONDON,
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Esquire. 1631.

Then take the record of the indictment, and close it within the Schedule, and seal, and send them up both together with the *Certiorari*.

Now to shew what is further meet for the Just. of peace to know, concerning this writ of *Certiorari*, and their certifying or Returne thereof.

After an indictment found before Justices of Peace, a *Certiorari* is procured by the meanes of some party indited or grieved, thereby to remove such indictment from the said Justice, and to convey it to Justices of a higher authority, to the end the party may either traverse such indictment above, or may there avoid it for insufficiency of forme or matter.

And this *Certiorari* is the Kings writ, issuing sometimes out of the Chancery, and sometimes out of the Kings Bench, and may be directed to any Court of Record, or officer of Record (as to a Justice of peace, Sheriffe, Coroner, or Escheator) to be certified of any Record, which is before any of them: and first an *Alias*, then a *Plur*, and lastly an *Attachment* lieth against them that should send it (if the record be not certified accordingly) *Fit. 245. a* or it seemeth a *Subpoena* is used at this day.

If it be returnable into the Chancery, then are the words, *In Cancellaria nostra*; and if into the Kings Bench, then the words are, *Nobis mittatis*; and if into the Court of Common Pleas, then *Coram Justiciariis nostris de Banco*.

The *Certiorari* may be sometimes to remove and send up the Record itselfe, and sometimes but onely the Tenour of the Record (as the words therein be) and it must be obeyed accordingly. *Fit. 245. b*

If there be variance between the *Certiorari* and the Record which is to be removed, the Justices need not to certifye such Record, *Lam. 500.* *Plo. 393.*

A Justice of peace may deliver, or send into the Kings Bench, an indictment found before him; or a Recognisance of the peace taken by him; or a force recorded by him, without any *Certiorari*: but if a Just. of peace having a record in his hands, be discharged of his office, now he cannot certifye it without a *Certiorari*, although he be made a Justice of peace againe. *Cromp. 132. a. & 133. b. 3.*
See 8 H. 4. f. 5. Br. Record 64.

If a *Certiorari* be to send up the Indictment of A. in which indictment some others be indicted together with the same A. yet need not the Justice of peace to make certificate concerning any but A. For although they be named jointly, yet be they indited severally, and the King may pardon A. without forgiving the other. *6 Ed. 4. 5.* *Ed. 4. 5.*

If a *Certiorari* shall come to the Justices of peace to remove an indictment, and the party sueth not to have it removed, but suffereth it to lye still after the day of the returne of the *Certiorari*, yet it seemeth the Justices of peace ought (*ex officio*) to send it away, because the writ containeth in it selfe a commandement to them so to doe, and so is a *Superfedeas* of it selfe to the Justices of peace, to stay their other proceedings. See *ante* *is. Forcible Entry*. *6 H. 7. 16. 1* *Br. Judg. 17.*

And yet by others, the Justices may proceed upon the Indictment *Vide Cromp. 132. 133. & 166. Dyer 245.*

And albeit the *Certiorari* bee a *Superfedeas* of it selfe, yet may the party *Lamb. 497.*

Fitz. N. B.
337c.

partie upon the *Certiorari* purchased, have a *Superfideas* writ, directed to the Sheriffe, commanding him that he arrest him not, upon that Record before the Justices of peace, *Fitz. fol. 237*. In which place also he doubteth whether the Justices of peace themselves ought not of duty to award their owne *Superfideas*, to the same effect, after that the Writ of *Certiorari* is brought to their hands.

Lamb. 48.

If a *Certiorari* come to the Justices of peace to remove an inditement, and in truth the inditement was not taken till after the date of that *Certiorari*, yet if the inditement be removed thereby, it is good enough, for that they both be the Kings courts, (1 *Rich. 3. 4.*) and in such a case it is now usual to remove it. *Vide Fitz. 71. d.*

But all writs of *Certiorari*, being to remove any inditement of forcible Entrie, or Riot, or of assault and battery, to be found before the Justices of peace, shall now be delivered at some Quarter Sessions of the peace, in open court, &c. *Stat. 21. Jacobi cap. 8. See hic antea in Forcible Entrie, cap. 84.*

Lamb. 571.

All the higher courts at Westm. may write to the Justices of peace to certify their Records, that doe make for the triall of causes depending in them, as you may reade 19. *H. 6. 19.* where they of the Common place did send to the Justices of Peace for an inditement, because in a Writ of Conspiracie (brought or depending before them) it was materiall to have it.

In some cases the Justice of peace may certify a Record (by him made, or found before him out of Sessions) without any Writ of *Certiorari* therefore to him directed: *Vide antea 311. Forcible Entrie.*

In other cases he must of duty certify his proceedings, but may spare to certify the Record, untill a *Certiorari* come to him for it. See hereof *antea, tit. Suretie for the peace.*

For the manner of the writ of *Certiorari*, to remove records from one court to another, or from the Justices of peace or other officers of record, to any the higher courts at Westm. &c. there are divers formes and sorts thereof, as you may see in *Fitz. Na. Br. fo. 242. &c.*

I will only set you downe here one forme for all, and so conclude.

The forme of a *Certiorari* out of the Chancerie, to certify a Recognisance, taken by a Justice of peace in the country, for the keeping of the peace, &c.

F. N. B. 31c.
Crompt. 143.

C Arohus Dei gratia Anglia, Scotia, Francia, & Hibern' Rex, fidei defensor, &c. Custod' pacis nostr' in Comitatu Cati, & eorum cuilibet salutem: Volentes certis de causis *Certiorari*, super tenorem cujusdam securitatis Pacis, (vel boni gestus) quam A. P. Armiger, nuper irovens coram vobis, vel aliquo vestrum, de eo quod ipse dampnum vel malum aliquod R. S. aut alicui alii de populo nostro de corpore suo, nec faceret nec fieri procuraret quovismodo: vobis mandamus, quod tenorem securitatis pacis (sive boni gestus) predicti, nobis in Cancellar' nostr' in Oñibus Purificat' beate Mariæ, prox' futur', ubicunque tunc fueris, sub sigill' vestr', vel unum vestrum distindis & aperis sine dilacione minis, Et hoc sub pœna centum libr' nullatenus

N N

centum

*sentis amittitur, nec aliquis vestrum ombat. Teste scripto apud Westmonast
die Novembri, anno regni nostri sexto.*

The returne hercof, See *ante* 311. *Supreme for the peace, cap. 73.*

*Nota quod Record ne ferra remove, me per Certiorare, on Corpore cum
causa. Fitz. Record. 3.*

Note also that upon a *Certiorari* to remove an Indictment of a Riot, or
forcible Entry, &c. the Returne must have these words, *Necnon ad diver
sas Felonias, &c.* For if the Returne mentions onely that they are Justices
of the Peace, without the former words *Necnon ad diversas felonias, trans
gressi, & alia malefacta, &c.* according to the Commission, the Returne is
insufficient. 12. H. 7. 25. 3. R. 3. 9. Br. Indictment 32. 50.

Also note that no *Certiorari* shall bee granted to remove any Re
cognisance, except the same writ bee signed with the proper hand of the
chiefe Justice, or (in his absence) of one of the Justices of that
court, out of which the same Writ shall be a
warded or made: statute 1. & 2. Ph.

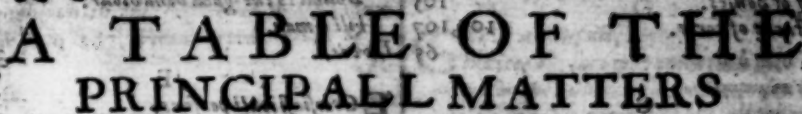
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Deu

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Authority must be pursued.

60 B 1170

R Arrestor: who, cap. 10. bound to the prison, &c.

For good behavior, 75, in Courts and County.

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Part 1: The Problem

be committed to the hands of certain individuals.

the reputed father bound to be forth coming.

ibid, the subjects are to take order for the

1072, II. forms of an Order, v. 31 of the 1st

not agree, it is what ballards boys know

extend, *ibid.* the woman is to be released upon

ento, ibid. *Bastard* *Kyoto* - *du* *...*

Believe it justifiable,
 as a matter of authority and common sense.

(copy of NY letter 33-78-98) re: [redacted]

70 fibers, 73, 78, 98. in the face of my hands, 73, 78.

in defence of Justice.

Baker.

DATE: 12, 11, 1942

* The number, lb., who are available, if it were known

1. The first part of the document is a list of names and addresses, which are arranged in two columns. The names are written in a cursive script, and the addresses are written in a more formal, printed style. The list includes names such as "John Doe", "Jane Smith", and "Robert Johnson", along with their respective addresses.

281.811.348.47.7.6

Good to register.

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Blackwood Sea doing

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Soli Deo Gloria.

Deus
Minimis Magnus.



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